

CONTRACT

for the

**DEVELOPMENT, IMPLEMENTATION, OPERATION
AND MAINTENANCE**

of the

REGIONAL FARE COORDINATION SYSTEM

Division I: Contract Terms and Conditions
Division II: Services Specifications
Division III: Equipment Specifications

CONTRACT NO. 229944

TABLE OF CONTENTS

DIVISION I – TERMS AND CONDITIONS

DEFINITIONS AND RULES OF CONSTRUCTION

1.I-1	Definitions.....	I-2
1.I-2	Acronyms.....	I-2
1.I-3	Rules of Construction.....	I-2

NATURE OF CONTRACTING PARTIES AND CONTRACT ADMINISTRATOR

2.I-1	Contractor.....	I-3
2.I-2	Agencies.....	I-4
2.I-3	Contract Administrator.....	I-5

CONTRACT ADMINISTRATION

3.I-1	Administration and Supervision.....	I-5
3.I-2	Contract Documents and Precedence.....	I-6
3.I-3	Governmental Rules and Approvals.....	I-7
3.I-4	Public Disclosure.....	I-8
3.I-5	Prohibited Interests.....	I-8
3.I-6	Contingent Fees, Gratuities & Conflicts of Interest.....	I-8

CONTRACTOR'S RESPONSIBILITY

3.I-7	Responsibility of the Contractor.....	I-9
3.I-8	Contractor's Duty as to Financial Matters.....	I-9
3.I-9	Contractor's Permits.....	I-10
3.I-10	Compliance with Banking and Other Financial Regulations.....	I-10
3.I-11	Security of RFC System.....	I-11
3.I-12	Audit Responsibilities.....	I-12
3.I-13	System Backup and Disaster Recovery/Business Resumption Plan.....	I-12

AGENCIES' AUTHORITY

3.I-14	Agency Control over Transit Policy and Service Pricing.....	I-13
3.I-15	Publicity.....	I-14
3.I-16	Agency Approval of Additional Application on Cards Issued by the Agencies.....	I-14
3.I-17	Agency Approval of Adding the RFCS Application to Cards Issued by the Contractor or Third Parties.....	I-16
	3.I-17.1 General.....	I-16
	3.I-17.2 Institutional Customer Cards.....	I-16
	3.I-17.3 Other Cards Proposed by Agencies.....	I-17
	3.I-17.4 Other Cards Proposed by Contractor.....	I-17

CONTRACTOR'S PERSONNEL

3.I-18	Key Personnel.....	I-18
3.I-19	Removal of Contractor Personnel.....	I-19

SUBCONTRACTORS

3.I-20	Subcontracts.....	I-19
3.I-21	Assignment of Subcontractors to the Agencies.....	I-20
3.I-22	Responsibility for Work Performed by Subcontractors.....	I-20
3.I-23	Major Subcontractor.....	I-20
3.I-24	Subcontract Records.....	I-21
3.I-25	Payment to Subcontractors.....	I-21

PROJECT SCHEDULE & TIME PROVISIONS

3.I-26	Project Schedule for System Development Work.....	I-22
26.1	Purposes.....	I-22

26.2	Baseline Project Schedule.....	I-22
26.3	Schedule Format.....	I-24
26.4	Schedule Contents.....	I-24
26.5	Updates of Project Schedule and Monthly Reports.....	I-25
26.6	Untimely Schedules and Reports.....	I-26
3.I-27	Progression of System Development Work.....	I-26
3.I-28	Agency Caused Delays.....	I-31
3.I-29	Force Majeure Delays.....	I-32
3.I-30	Temporary Suspension of Work.....	I-32
3.I-31	Change Orders.....	I-33
3.I-32	Cost/Price Analysis.....	I-35
3.I-33	Contract Claims.....	I-35
3.I-34	Dispute Review Board.....	I-38
INTELLECTUAL PROPERTY		
3.I-35	Intellectual Property.....	I-40
35.1	General.....	I-40
35.2	Driver Display Unit (“DDU”).....	I-42
35.3	King County Radio Control Unit.....	I-45
35.4	Other Hardware and Software.....	I-46
35.5	Contract Deliverables.....	I-54
35.6	Rights in Trademarks.....	I-55
35.7	Ownership of Use Data and Use Data Reports.....	I-56
INSPECTIONS & TESTING		
3.I-36	Agency Inspections.....	I-57
3.I-37	Operations Services Facility Inspections.....	I-58
3.I-38	Plant Inspection.....	I-58
3.I-39	Source Inspection.....	I-58
3.I-40	Testing	I-59
SOURCE OF SUPPLY, QUALITY OF MATERIALS AND DELIVERY		
3.I-41	Readily Available Sources.....	I-59
3.I-42	Defective Materials.....	I-60
3.I-43	Contractor Furnished Material.....	I-60
3.I-44	Manufacturers’ Information.....	I-60
3.I-45	New Materials.....	I-61
3.I-46	Sources of Materials.....	I-61
3.I-47	Shipment Authorization.....	I-61
3.I-48	Delivery of Equipment and Materials.....	I-61
PARTS AVAILABILITY AND PRICING		
3.I-49	Parts Availability Assurance.....	I-62
3.I-50	Pricing of Spare Parts and Fare Cards.....	I-62
3.I-51	Quality Assurance and Control.....	I-62
PRE-ACCEPTANCE DEFICIENCIES		
3.I-52	Pre-Acceptance Deficiencies in Work Provided Before Full System Acceptance – General.....	I-63
3.I-53	Pre-Acceptance Deficiencies in Equipment Provided Before Full System Acceptance.....	I-64
3.I-54	Pre-Acceptance Deficiencies in Work Provided After Full System Acceptance....	I-65
WARRANTIES		
3.I-55	General Warranties.....	I-66
3.I-56	Software Warranty Maintenance.....	I-67
3.I-57	Software Post-Warranty Maintenance.....	I-68
3.I-58	RFC System Warranty and Post-Warranty Maintenance.....	I-68
58.1	General.....	I-68

58.2	Contractor's Maintenance Responsibilities.....	I-70
58.3	Warranty Maintenance (Excluding Software Warranty).....	I-70
58.4	Post-Warranty Maintenance.....	I-72
58.5	Agency Maintenance Responsibilities.....	I-72
3.I-59	RFC System Smart Card Warranty.....	I-73
3.I-60	Intellectual Property Warranties.....	I-73
3.I-61	Manufacturers' Extended Warranties.....	I-75
3.I-62	Price Warranty.....	I-75
3.I-63	No Waiver of Warranties and Contract Rights.....	I-75

LEGAL RELATIONS

3.I-64	Legal Relations.....	I-76
64.1	No Third Party Rights Created and No Partnership Formed.....	I-76
64.2	Compliance with Law.....	I-76
64.3	Contractor and Subcontractor Employees.....	I-76
64.4	Audit Exceptions.....	I-77
64.5	Defense and Indemnification – General.....	I-77
64.6	Defense and Indemnification – Intellectual Property Infringement Claims.....	I-77
64.7	Limitation on Indemnity for Indirect Damages.....	I-78
64.8	Aggregate Limits.....	I-78
64.9	Miscellaneous Provisions.....	I-79
64.10	Assignments, Sales, Mergers and Acquisitions.....	I-79
64.11	Applicable Law and Jurisdiction.....	I-80
64.12	Severability.....	I-80
64.13	Survival.....	I-80
64.14	Insurance Obligations Separate and Independent.....	I-80

GENERAL TERMS AND CONDITIONS

3.I-65	Duration of Contract.....	I-81
3.I-66	Termination of Contract.....	I-81
3.I-67	Nondiscrimination.....	I-83
3.I-68	Audits and Evaluation.....	I-85
3.I-69	Maintenance of Records.....	I-86
3.I-70	Section 504 and Americans with Disabilities Act.....	I-86
3.I-71	Recycled Product Procurement Policy.....	I-87
3.I-72	Conflict Resolution.....	I-87
3.I-73	Notice	I-88
3.I-74	Entire Contract/Waiver of Default.....	I-88
3.I-75	Contract Amendments.....	I-88
3.I-76	Payment.....	I-89
76.1	Payments – General.....	I-89
76.2	Set-Off of Agency Claims.....	I-89
76.3	Payment Procedures & Schedules through Full System Acceptance.....	I-90
76.4	Payment Procedures & Schedules after Full System Acceptance.....	I-94
76.5	Project Staff Positions & Hourly Rates.....	I-99
76.6	Future Price Adjustments.....	I-100
3.I-77	Work and Materials Omitted.....	I-100
3.I-78	Charges to Contractor	I-101
3.I-79	Taxes, Licenses, and Certificate Requirements.....	I-101
3.I-80	Performance Security	I-101
80.1	Letter of Credit	I-101
80.2	Form of Letter of Credit.....	I-103
80.3	Form of Performance Bond.....	I-103
80.4	Procedure for Security Document Drawdown.....	I-103
80.5	Provision of New Security Document.....	I-104
80.6	Retainage Account.....	I-104

	80.7	Legal Effect of Security Documents.....	I-106
3.I-81		Monitoring Contractor Performance.....	I-106
3.I-82		Disclosure.....	I-107
3.I-83		Disadvantaged Business Enterprise (DBE) Requirements.....	I-107
3.I-84		Lobbying Certification and Disclosure.....	I-108
3.I-85		Contract Close-Out and Transition.....	I-108
3.I-86		Other Contracts from this Procurement Process.....	I-109
INSURANCE			
4.I-0		Insurance.....	I-110
4.I-1		Insurance Requirements.....	I-110
	1.1	General Requirements.....	I-110
	1.2	Minimum Scope of Insurance.....	I-110
	1.3	Minimum Limits of Insurance.....	I-111
	1.4	Deductibles and Self-Insured Retentions.....	I-112
	1.5	Other Insurance Provisions.....	I-112
	1.6	Acceptability of Insurers.....	I-113
	1.7	Verification of Coverage.....	I-113
	1.8	Subcontractors.....	I-113
4.I-2		Certificate of Insurance.....	I-114
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS			
5.0		Federal Transit Administration (FTA) Requirements.....	I-114
5.I-1		Federal Changes.....	I-114
5.I-2		No Government Obligations to Third Parties.....	I-114
5.I-3		Disadvantaged Business Participation.....	I-114
5.I-4		Civil Rights.....	I-115
5.I-5		Buy America Requirements.....	I-117
5.I-6		Contract Work Hours and Safety Standards Act.....	I-117
5.I-7		Access to Records and Reports.....	I-118
5.I-8		Cargo Preference – Use of United States Flag Vessels.....	I-118
5.I-9		Contractor's and Subcontractors' Certificate Regarding Debarment, Suspension, Ineligibility or Voluntary Exclusion.....	I-119
5.I-10		Program Fraud and False or Fraudulent Statements and Related Acts.....	I-120
5.I-11		Environmental Requirements.....	I-120
5.I-12		Recycled Products.....	I-121
5.I-13		Incorporation of Federal Transit Administration (FTA) Terms.....	I-121
5.I-14		Rights in Data and Copyrights.....	I-122
DIVISION II			
6.II	Services Specifications.....		Division II Document
		Introduction.....	II-1
6.II-1		Customer Service.....	II-3
6.II-2		Institutional Programs.....	II-10
6.II-3		Card Procurement and Distribution.....	II-22
6.II-4		Fare Card Management.....	II-25
6.II-5		Clearinghouse Services.....	II-30
6.II-6		Marketing Plan (Section deleted).....	II-43
6.II-7		Financial Management.....	II-44
6.II-8		Network Management.....	II-48
6.II-9		Revalue Network Support Services.....	II-51
6.II-10		Maintenance and Technical Support Services.....	II-53
6.II-11		System Implementation.....	II-55
6.II-12		Training Requirements.....	II-107

DIVISION III

6.III	Equipment Specifications.....	Division III Document
6.III-1	General Technical Requirements.....	III-1
6.III-2	Fare Card.....	III-22
6.III-3	General Requirements – Fare Transaction Processor.....	III-34
6.III-4	Onboard Fare Transaction Processor.....	III-49
6.III-5	Vehicle Logic Unit (VLU) – Provided by Others.....	III-57
6.III-6	Driver Display Unit (DDU).....	III-58
6.III-7	Wireless Data On/Off Loading System (WDOLS).....	III-67
6.III-8	Portable Fare Transaction Processor (PFTP).....	III-71
6.III-9	Stand-Alone Fare Transaction Processor.....	III-75
6.III-10	Integration with Sound Transit TVMs.....	III-78
6.III-11	Customer Service Terminal (CST).....	III-85
6.III-12	Data Collection System.....	III-101
6.III-13	Back Office Data Integration.....	III-106
6.III-14	Non-Fare Applications.....	III-132
6.III-15	System Expansion and Potential Future Applications.....	III-133
6.III-15	WSF Implementation Requirements.....	III-139

ATTACHMENTS.....	
Attachment A -	Affidavit and Certificate of Compliance Regarding Equal Employment
Attachment B -	Sworn Statement Regarding Disadvantaged Business Enterprise Solicitation and Utilization Commitment
Attachment C -	Current or Former Employee Disclosure Form
Attachment D -	Certification Regarding Lobbying
Attachment E -	Disclosure Form to Report Lobbying/Disclosure of Lobbying Activities
Attachment F -	Buy America Certificate
Attachment G -	Certification Regarding Debarment, Suspension, and Other Ineligibility and Voluntary Exclusion – Lower-Tier Covered Transactions
Attachment H -	Project Design, Development and Implementation Schedule

EXHIBITS.....	
Exhibit 1 -	Definitions
Exhibit 2 -	Acronyms
Exhibit 3 -	Guaranty
Exhibit 4 -	Agency Shares
Exhibit 5 -	Operating Concept Overview
Exhibit 6 -	Business Rules and Policies
Exhibit 7 -	Identity, Location and Commitment of Key Personnel
Exhibit 8 -	Baseline Project Schedule
Exhibit 9 -	Price Schedule
Exhibit 10 -	Escrow Provisions
Exhibit 11 -	ERG R&D Pty. Ltd. IP Acknowledgement
Exhibit 12 -	Intellectual Property Table
Exhibit 13 -	Software Maintenance
Exhibit 14 -	Post Warranty Depot Maintenance
Exhibit 15 -	Post Warranty On-Site Maintenance
Exhibit 16 -	Letter of Credit Form
Exhibit 17 -	Performance Bond Form

APPENDICES.....	
Appendix A -	Estimated Equipment Quantities
Appendix B -	Sample Agency Report Information
Appendix C -	King County Access & Identification Information

Appendix D - Regional Reduced Fare Permit Program
Appendix E - King County RCU Information
Appendix F - Conceptual King County Driver Display Unit Operating Concept

CONTRACT
for the
DEVELOPMENT, IMPLEMENTATION, OPERATION AND MAINTENANCE
of the
REGIONAL FARE COORDINATION SYSTEM

This Contract is made and entered into this 29th day of April, 2003, by and between ERG Transit Systems (USA) Inc, a California corporation and wholly owned subsidiary of ERG Limited, an Australian corporation, (hereinafter referred to as the "Contractor") and each of the following seven public transportation agencies (hereinafter referred to individually as an "Agency" or collectively as the "Agencies"):

1. Central Puget Sound Regional Transit Authority ("Sound Transit")
2. King County ("King County")
3. Kitsap County Public Transportation Benefit Area ("Kitsap Transit")
4. Pierce County Public Transportation Benefit Area ("Pierce Transit")
5. Snohomish County Public Transportation Benefit Area ("Community Transit")
6. City of Everett ("Everett")
7. State of Washington, acting through the Washington State Department of Transportation, Washington State Ferries Division ("WSF")

RECITALS

- A. The Agencies provide public transportation services within their service areas and as part of such services, collect fares from riders.
- B. The Agencies desire to implement a Regional Fare Coordination System ("RFCS" or "RFC System") to establish a common fare system utilizing smart cards in order to better coordinate their respective services and improve the availability, reliability and convenience of public transportation.

C. The Agencies have jointly conducted a procurement process and selected the Contractor to develop, implement, operate and maintain the RFC System.

D. The purpose of this Contract is to establish the respective roles and responsibilities of the Contractor and the Agencies, and the functional and performance measures to be achieved by the Contractor, in the development, implementation, operation and maintenance of the RFC System.

NOW, THEREFORE, in consideration of the following terms and conditions and other valuable consideration, the sufficiency of which is hereby acknowledged, the Contractor and each Agency agrees as follows:

DIVISION I - TERMS AND CONDITIONS

DEFINITIONS AND RULES OF CONSTRUCTION

1.I-1 Definitions

Words and terms shall be given their ordinary and usual meanings. Certain words and terms are defined for this Contract and shall have the meanings indicated in Exhibit 1 which is attached hereto and made a part hereof. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

1.I-2 Acronyms

Certain words, names or phrases in the Contract are referred to by their initials for ease of reference. A list of acronyms and their related meanings is provided in Exhibit 2 which is attached hereto and made a part hereof.

1.I-3 Rules of Construction

3.1 All references to dollars in the Contract and all payments made to the Contractor by the Agencies, and to the Agencies by the Contractor, shall be in United States dollars.

3.2 Unless the context requires otherwise, the singular includes the plural, the plural includes the singular, and each masculine, feminine and neuter genders includes the other genders.

3.3 References to statutes or regulations include all statutory or regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

3.4 The words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation”.

3.5 References to sections, exhibits, attachments or schedules are to this Contract and references to articles or sections followed by a number shall be deemed to include all subarticles, subsections, subclauses, subparagraphs and other divisions bearing the same number as a prefix.

3.6 Words such as “herein,” “hereof” and “hereunder” are not limited to the specific provision within which such words appear but shall refer to the entire Contract taken as a whole.

3.7 Words not otherwise defined that have well-known technical industry meanings are used in accordance with such recognized meanings.

3.8 The captions and headings in this Contract are for convenience of reference purposes only and shall not be deemed part of this Contract or considered in interpreting this Contract.

3.9 The Contract Documents are intended to be complementary and what is called for by any one of them shall be binding as if called for by all, except in the event of a conflict in which case Section 3.I-2 shall apply.

3.10 Should it appear to Contractor at any time after the issuance of a Notice to Proceed that the Work to be done or any of the matters relative thereto are not sufficiently detailed or explained, or that there are errors, omissions, ambiguities, discrepancies, inconsistencies or other conflicts in the Contract Documents, Contractor shall promptly notify the Contract Administrator of such and shall obtain from the Contract Administrator specific instructions thereon, in writing, prior to proceeding with the affected Work. Failure to timely apply to the Contract Administrator for explanation or clarification shall waive any claim by the Contractor for any relief whatsoever on the basis of a lack of understanding of the Contract.

NATURE OF CONTRACTING PARTIES AND CONTRACT ADMINISTRATOR

2.I-1 Contractor

1.1 The Contractor, ERG Transit Systems (USA) Inc, is a California corporation that represents and warrants that it has secured, and will take all actions necessary to renew and retain in effect during the term of this Contract, the following:

(a) a Certificate of Status as a Domestic Corporation issued by the Secretary of State of the State of California evidencing that the Contractor is an active, lawfully constituted corporation in good standing; and

(b) a Certificate of Authority issued by the Secretary of State of the State of Washington evidencing that the Contractor is authorized to transact business in Washington under UBI Number 602-146-651; and

(c) Federal Tax I.D.#77-0523753.

1.2 The Contractor is wholly owned and controlled by its parent corporation, ERG Limited, an Australian corporation. ERG Limited shall be fully liable for all obligations of the Contractor under this Contract and, as a condition of this Contract, shall also guarantee the performance of all Contractor obligations under an independent Guaranty, in the form attached hereto and made a part hereof as Exhibit 3. The Guaranty, executed by one or more duly authorized representatives of ERG Limited, shall be submitted to the Contract Administrator concurrent with execution of this Contract.

2.1-2 Agencies

2.1 Each Agency is an independent party with contract privity running between itself and the Contractor. The Contractor understands and agrees that the Agencies collectively do not constitute a corporation, partnership, joint venture or other collective entity and that no Agency may legally bind another.

2.2 The Contractor understands and agrees that the Agencies are not jointly and severally liable for the payment and other obligations of the Contract. The Contractor agrees that it shall bring any claims or lawsuits of any kind based on this Contract against all of the Agencies, except to the extent the claim or lawsuit is based on an obligation that is expressly identified in this Contract as solely the responsibility of one or more particular individual Agencies. The Contractor also agrees that each Agency shall only be liable to the Contractor, if at all, for a full or partial share as determined among the Agencies in their written agreement but in no event shall the sum of the individual Agency shares be less than 100% for any payment or obligation under the Contract. Except for those tasks for which payment is identified as the sole responsibility of a particular Agency, the initial Agency shares of payments due to the Contractor are specified in Exhibit 4 which is attached hereto and made a part hereof. The Agencies, at their sole discretion, may modify said Exhibit to reallocate their shares of a 100% total and if they do so, the Agencies shall provide the Contractor with written notice at least thirty (30) days in advance of the effective date of said modification.

2.3 Each Agency will:

- (a) make available to the Contractor, at reasonable times and subject to reasonable advance notice, the appropriately qualified and experienced personnel of each Agency to facilitate performance by the Contractor of its obligations under this Contract, including but not limited to facilitating the Contractor's integration of the RFC System with each Agency's systems in accordance with the Contract requirements; and
- (b) provide responses, directions, consents, notices and all information reasonably required by the Contractor under this Contract within the timeframes required under this Contract and if no time is specified, then within a reasonable time having regard to the nature of the response, direction, consent, notice or information requested.

2.I-3 Contract Administrator

3.1 Each Agency has authorized an employee of King County to act on its behalf as Contract Administrator for communicating with the Contractor, processing Contract documents and invoices, making payments and such other activities as are expressly assigned to the Contract Administrator in this Contract. The Contractor agrees that it will interact with each Agency solely through the Contract Administrator except as expressly provided otherwise in this Contract. Each Agency agrees to be bound by the Contract Administrator's acts or omissions in connection with those activities expressly assigned to the Contract Administrator in this Contract.

3.2 The Contract Administrator and King County, in its capacity as employer of the Contract Administrator, are not parties to this Contract and neither owes any duty or obligation to the Contractor. Accordingly, the Contractor agrees that it shall not file any claim, lawsuit or demand of any kind against the Contract Administrator or King County in its capacity as employer of the Contract Administrator. The Contractor agrees that any claim or cause of action which it may have arising out of an act or omission of the Contract Administrator shall be directed against the Agency or Agencies on whose behalf the Contract Administrator was engaged.

CONTRACT ADMINISTRATION

3.I-1 Administration and Supervision

1.1 This Contract is between the Agencies and the Contractor who will be responsible for the Work described herein. The Agencies are not parties to defining the division of work between the Contractor and its Subcontractors, if any, and the specifications have not been written with this intent.

1.2 The Contractor represents that it has or will obtain all personnel and equipment required to perform the Work and that such personnel shall be qualified, experienced and licensed as may be necessary or required by laws and regulations to perform such Work. Such personnel shall not be current employees of any Agency or former employees of any Agency without the written approval of the Contract Administrator. Any current or former Agency employees who are involved, or become involved, in the performance of the Contract must be disclosed according to Attachment C; and the Agencies will determine whether conflicts of interest or ethical violations exist under the circumstances.

1.3 The Contractor's performance under this Contract will be monitored and reviewed by the Contract Administrator appointed by the Agencies. Reports and data required to be provided by the Contractor shall be delivered to the Contract Administrator. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Contract Administrator for response.

1.4 The Work required under this Contract shall be performed by the Contractor, its employees, or by Subcontractors whose selection has been authorized by the Agencies in accordance with Section 3.1-20; provided, that the Agencies' authorization shall not relieve the Contractor or its Subcontractors from any duties or obligations under this Contract or at law to perform in a satisfactory and competent manner.

1.5 The Agencies shall designate a Contract Administrator for contract administration. The Agencies, through the Contract Administrator, will issue any notices required under this Contract.

3.1-2 Contract Documents and Precedence

2.1 The Parties intend that the RFCS to be provided under this Contract will implement the "Operating Concept Overview" which is attached hereto and made a part hereof as Exhibit 5 and the "Business Rules and Policies" which are attached hereto and made a part hereof as Exhibit 6. The Parties acknowledge, however, that the Agencies lack the expertise to have prescribed in the Request for Proposals ("RFP") and revised RFPs a detailed specification for every element of the RFCS. Accordingly, a portion of the Work to be performed under this Contract is the preparation and delivery of various items, design documents, plans and specifications that, subject to their approval by the Agencies, will serve as requirements for subsequent Work to be performed by the Contractor. The Contractor hereby confirms that the Contract Documents specified below will form a complete set of Contract requirements that, if met, will produce an RFC system that meets or exceeds the functions and features contained in the "Operating Concept Overview" and the "Business Rules and Policies". Omission of details of the Work from the Contract Documents or the misdescription of details generally acknowledged to be customary and/or necessary to carry out the Work or which Contractor knew or reasonably should have known and should have included in its Proposal shall not relieve Contractor from performing such

omitted or misdescribed Work, and said Work shall be performed as if fully and correctly set forth and described in the Contract, without entitlement to a Contract Claim hereunder.

2.2 This Contract shall consist of the following documents which shall be referred to as the "Contract Documents":

1. Written Change Orders and Amendments signed by the duly authorized representatives of the parties in accordance with the terms of Division I.
2. The Baseline Project Schedule, as amended, that is approved by the Agencies pursuant to Division I, Section 3.I-27.6.
3. Division I, "Terms and Conditions", Division II, "Services Specifications", Division III, "Equipment Specifications" and the attachments, exhibits and appendices to said Divisions, all as conformed in the signed, duplicate originals.
4. All "Design Review Items" listed in Figure II-11.3 of Division II and all "Plans" listed in Figure II-11.6 of Division II, once a Notice of Apparent Completion ("NAC") has been issued by the Agencies for each outline, draft and final form of said Design Review Items and Plans.

In the event of any conflicting provisions or requirements within the several parts of the Contract Documents, they shall take precedence in the order listed, with the first listed governing and taking precedence over those listed after them. Provided, however, the provisions of signed, written Change Orders and Amendments shall govern and take precedence only over the specific provisions of the Contract expressly changed thereby.

2.3 The Agencies have not specified particular equipment products, models and third party software applications, and the Contractor is responsible for meeting the requirements in the Contract Documents. However, the Contractor shall not, without Contract Administrator approval, provide equipment products, models and third party software applications other than those identified in the Contractor's Revised Best and Final Offer dated June 21, 2002.

3.I-3 Governmental Rules and Approvals

3.1 The Contractor acknowledges and agrees that it has familiarized itself with the requirements of any and all applicable state, federal and local laws, regulations and ordinances, and the conditions of any required licenses and permits prior to entering into this Contract. The Contractor shall be responsible for complying with the foregoing at its sole cost and expense and without any increase in the Contract Price or a Baseline Project Schedule extension on account of such compliance, regardless of whether such compliance would

require additional time for performance or additional labor, equipment and/or materials not expressly provided for in the Contract. The Contractor has no reason to believe that any governmental approval required to be obtained by the Contractor will not be granted in due course and thereafter remain in effect so as to enable the Work to proceed in accordance with the Contract. The Contractor acknowledges and agrees that the foregoing requirements may change and that such changed requirements shall apply to the Work as appropriate.

3.2 The Contractor may file a Contract Claim under Section 3.I-33 if it believes it is entitled to additional compensation or an extension to the Baseline Project Schedule due to a change in any of the requirements of applicable state, federal and local laws, regulations and ordinances occurring after the effective date of this Contract.

3.I-4 Public Disclosure

The Contract Documents are public records and will be available for inspection and copying by the public to the extent prescribed by Washington State law, provided that the Agencies will cooperate with the Contractor to maintain the confidentiality of any Contractor cost information and supporting documents that are provided to the Agencies pursuant to the Contract to the extent permitted by law.

3.I-5 Prohibited Interests

No member, officer or employee of any Agency or its governing body, during such person's tenure or one year thereafter, shall have any interest, direct or indirect, in this Contract or the proceeds thereof unless such interest has been disclosed in writing to the Contract Administrator and the Agencies have determined that no prohibited conflicts of interest or ethical violations inhere in the circumstances. In addition, in accordance with 18 U.S.C. 431, no member of or delegates to, the Congress of the United States shall be permitted to a share or part of this Contract or to any benefit arising therefrom.

3.I-6 Contingent Fees, Gratuities & Conflicts of Interest

6.1 King County Code Chapter 3.04 is incorporated by reference as if fully set forth herein and the Contractor agrees to abide by all the conditions of said Chapter. Failure by the Contractor to comply with any requirements of this Chapter shall be a material breach of contract.

6.2 The Contractor covenants that no officer, employee, or agent of any Agency who exercises any functions or responsibilities in connection with the planning and implementation of the scope of services funded herein, or any other person who presently exercises any functions or responsibilities in connection with the planning and implementation of the scope of services funded herein shall have

any personal financial interest, direct or indirect, in this Contract. The Contractor shall take appropriate steps to assure compliance with this provision.

6.3 If the Contractor violates the provisions of Section 6.2 or does not disclose any other interest required to be disclosed pursuant to King County Code Section 3.04.120, as amended, the Agencies will not be liable for payment of services rendered pursuant to this Contract. Violation of this Section shall constitute a material breach of this Contract and grounds for termination pursuant to Section 3.I-66 below as well as any other right or remedy provided in this Contract or by law.

CONTRACTOR'S RESPONSIBILITY

3.I-7 Responsibility of the Contractor

7.1 The Contractor shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all plans, designs, drawings, specifications, reports and other services prepared or performed by the Contractor and its Subcontractors under this Contract. The Contractor shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in such plans, designs, drawings, specifications, reports and other services. Except where a higher standard is specified, the Contractor shall perform the Work to conform to or exceed the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware in the automated smart card fare payment industry.

7.2 The Agencies' approval of plans, drawings, designs, specifications, reports, and other Work shall not in any way relieve the Contractor of responsibility for the technical adequacy or accuracy thereof. Neither the Agencies' review, approval or acceptance of, nor payment for, any of the Work shall be construed to operate as a waiver of any Agency rights under this Contract or of any cause of action arising out of the performance of this Contract.

7.3 Any copies of plans, drawings, reports or other documents made available by the Agencies to the Contractor shall be solely as additional information to the Contractor and do not relieve the Contractor of its duties and obligations under this Contract nor constitute any representation or warranty by the Agencies as to conditions or other matters related to the Contract. It shall be the sole responsibility of the Contractor to gather and become familiar with all site information including existing improvements.

3.I-8 Contractor's Duty as to Financial Matters

In performing this Contract, the Contractor will be entrusted with the responsibility for documenting financial transactions; for processing the data that constitutes the record of said transactions and the funds paid to, from and among the

Agencies, their customers and other third parties pursuant to said transactions; for directing banks to transfer funds to and from the Agencies' accounts; and for maintaining the integrity of financial records. The Contractor shall exercise its responsibilities regarding these matters and institute mechanisms for the custody and management of all funds and records, all in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry and in accordance with applicable federal and state statutes, rules and regulations.

3.I-9 Contractor's Permits

9.1 The Contractor shall obtain and pay the cost of obtaining all governmental approvals required in connection with this project (other than any permits for which the Agencies have agreed, in their sole discretion, that they are the sole appropriate applicants); and prior to beginning any activities in the field, shall furnish the Contract Administrator with fully executed copies of all governmental approvals required for such portion of the Work. The Agencies agree to cooperate with the Contractor in connection with obtaining governmental approvals, as reasonably requested by the Contractor.

9.2 To the extent permit requirements are applicable, the Contractor shall comply with all permit conditions and give all notices necessary and incident to the due and lawful prosecution of the Work.

3.I-10 Compliance with Banking and other Financial Regulations

10.1 Contractor shall assume responsibility for compliance with all applicable banking, funds transfer, and related laws, regulations and system rules (as such laws, regulations and rules may be changed from time to time), including, without limitation: the Electronic Fund Transfer Act of 1978 and Regulation E of the Board of Governors of the Federal Reserve System ("Regulation E"); the Truth in Lending and Fair Credit Billing Acts and Regulation Z of the Board of Governors of the Federal Reserve System ("Regulation Z"); the Bank Secrecy Act of 1970 and regulations; any applicable laws or regulations concerning the taking of deposits by non-bank institutions; laws and regulations concerning escheatment of unclaimed property; and Automated Clearing House operating rules.

10.2 Contractor shall specify any Agency operational responsibilities or financial obligations arising under the foregoing or other applicable banking and financial laws as a result of Contractor's proposed system, including estimated costs to the Agencies.

3.I-11 Security of RFC System

11.1 Contractor shall maintain the security of the RFC System, including security for all computer systems, information and monetary transactions, in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry. Such security shall include, without limitation: (i) maintaining physical security of the RFC System, to ensure that no unauthorized person shall have access to the RFC System; (ii) creating firewalls, password protections, and other appropriate measures to protect against unauthorized access to the RFC System or to Customer information by Contractor's employees, Agency employees or third parties; (iii) protecting against penetration of security and manipulation of customer account data by Contractor's personnel, Agency personnel or third parties; and (iv) additional security measures as specified in the Services and Equipment Specifications in Divisions II and III.

11.2 Contractor shall update its security procedures as technology and security threats evolve to provide security capabilities at all times that are in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry.

11.3 Contractor shall have its security procedures and physical facilities audited on an annual basis by a qualified, nationally recognized firm, and Contractor shall take such actions as may be identified in such audit as necessary to comply with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry. Subject to the confidentiality provisions of this Contract, Contractor shall direct the auditor to provide the Contract Administrator with a copy of the report of such audit within fifteen (15) days after it is completed.

11.4 The Contractor shall report to the Contract Administrator any unauthorized use of the RFC System or unauthorized disclosure of RFCS-related data within forty-eight (48) hours after the Contractor becomes aware of such use or disclosure. In such event, the Contractor shall take such further steps as may reasonably be requested by the Contract Administrator to prevent further unauthorized use of the RFCS or data related thereto.

11.5 At all times, the Contractor shall maintain the security of the collection and clearinghouse operations in accordance with this Contract, applicable legal and regulatory requirements, and in accordance with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware used in the automated smart card fare payment industry.

3.I-12 Audit Responsibilities

Contractor shall implement and maintain appropriate RFC System capabilities to log and preserve an audit trail for all material events occurring as part of transactions involving transit customers. Contractor will provide a record of those audit events relating to services performed pursuant to this Contract in a mutually agreeable format on a semi-annual basis, but in any event in such frequency and format as is adequate to serve the Agencies' needs.

3.I-13 System Backup and Disaster Recovery/Business Resumption Plan

13.1 In accordance with the Contract Document Requirements List provided in Section 6.II-11.6.1.1, the Contractor shall submit to the Contract Administrator a comprehensive System Backup and Disaster Recovery/Business Resumption Plan. The Plan shall include, but is not limited to, the following elements:

- a. A detailed explanation of protections in place at the central clearinghouse facility and the Local Communication Server (LCS) site to protect against and mitigate the adverse impacts of power and/or communications failures, catastrophic events, or other disasters, including all on-site and remote data storage and backup procedures;
- b. A detailed explanation of the Contractor's compliance with the technical specifications for data backup and recovery provided in this Contract including, but not limited to, Sections 6.II-5.2.8 Database Management, 6.II-8.2.3 Network Management, 6.III-1.4 Data Backup and Recovery, and 6.III-3.8 FTP – Additional Security;
- c. A detailed description of the Business Recovery Center which the Contractor will set up and maintain in the Puget Sound area as a back-up site for the central clearinghouse facility and the LCS, including (i) the location of the facility; (ii) the number of anticipated personnel to be located at the facility should its full operation become necessary; (iii) how the facility will be mobilized and operated; and (iv) a schedule and description of periodic, complete tests of readiness for such facility;
- d. A detailed description of the tools, processes and procedures required to activate the Business Recovery Center. All tools, processes and procedures shall be provided to a local (within the Central Puget Sound Region) entity responsible for facility activation;
- e. Whether the Contractor plans to contract with a third party to activate and operate the Business Recovery Center. Such provision of services by a third party shall be subject to the approval of the Agencies, and shall require the third party to take reasonable steps to maintain the confidentiality of all software and data; and

- f. A detailed description of procedures to be followed by the Contractor in the event that a power and/or communications failure, catastrophic event, or other disaster occurs locally in the Puget Sound region.
- 13.2 Not later than the date of commencement of the BETA Test, the Contractor shall have set up and rendered operational a facility in the Puget Sound area that is capable of replicating centralized services and data related to the operation of the RFC System.
- 13.3 Contractor shall notify the Contract Administrator within four (4) hours of a power and/or communications failure, catastrophic event, or other disaster.
- 13.4 In the event that a power and/or communications failure, catastrophic event, or other disaster prevents operations at the central clearinghouse facility and/or disrupts communications to the RFCS, the Contractor shall:
- a. Immediately and automatically place the RFCS components in off-line operation such that fare sales and collection can continue without interruption;
 - b. Within twenty-four (24) hours, activate the Business Recovery Center and provide all RFCS on-line and off-line functionality with the exception of second tier customer service;
 - c. Within seventy-two (72) hours, provide Contractor-employed staff on-site to verify correct operation of the Business Recovery Center. Within this period the Contractor shall also assume on-going operation of the Business Recovery Center until such time as the central clearinghouse and full system operation is restored; and
 - d. Within thirty (30) days, restore full clearinghouse and system operation.

AGENCIES' AUTHORITY

3.I-14 Agency Control over Transit Policy and Service Pricing

Control over transit policy and service pricing shall remain the exclusive right of the Agencies and their respective policy boards. Regardless of the card issuance model(s) implemented, under no circumstances shall any provision of the Contract be interpreted as providing the Contractor any rights, privileges or control in transit policy and service pricing. The Agencies set their own fares, acting singly for services within that Agency's jurisdiction and in conjunction with any regional fares agreed to by the Agencies.

3.I-15 Publicity

15.1 All Work-related copy shall be approved in writing by the Contract Administrator prior to publication by the Contractor or its Subcontractors, which approval shall not be unreasonably withheld. The Contractor agrees not to allow Work-related copy to be published in the Contractor's or its Subcontractor's advertisements or public relations programs without prior written approval from the Contract Administrator. The Contractor agrees that published information on the Agencies or the Agencies' programs shall be factual only and in no way imply that the Agencies endorse the Contractor's firm, service, or product.

15.2 The Contractor shall refer all inquiries from the news media to the Contract Administrator and shall comply with the procedures of the Contract Administrator regarding statements to the media relating to this Contract or related services. If the Contractor receives a complaint from a citizen or the community, the Contractor shall inform the Contract Administrator about what action was taken to alleviate the situation.

15.3 Nothing in this Section prevents the Contractor from complying with its disclosure obligations to any stock exchange on which it or its parent company may be listed.

3.I-16 Agency Approval of Additional Applications on Cards Issued by the Agencies

16.1 The Agencies retain the sole right to decide which smart cards may be used with the RFC System, what capabilities they will have, and future developments concerning them. All smart cards issued by the Agencies for use in connection with any transportation services shall bear the Agencies' Marks specified by the Contract Administrator, and shall comply with all of the requirements set forth in this Contract ("RFCS-Branded Cards").

16.2 No RFCS-Branded Card shall have the capability of being used for any purpose other than the payment of transit fares unless and until any new proposed use or capability ("Proposed Application") has been reviewed and approved by the Contract Administrator in writing. The following are among the criteria the Agencies may consider in deciding whether to approve a Proposed Application for RFCS-Branded Cards but approval shall be subject to the Agencies' sole discretion:

- a. The nature of the Proposed Application and its impact on the transit-related use of the RFCS-Branded Card;
- b. The compatibility of such Proposed Application with the transit applications on the RFCS-Branded Card;

- c. The need for the Contractor or any of its Subcontractors to access, use, and/or disclose Use Data relating to the operation of the RFC System in connection with the Proposed Application, and the restrictions applicable to the Contractor's use of other personal data resulting from such additional application;
- d. The value added by the Proposed Application for users of the RFCS-Branded Card;
- e. Such other criteria as the Agencies may consider relevant, including but not limited to the operation of the RFC System, the use of the RFCS-Branded Card, the protection of the Agencies' Marks, or the integrity and public image of the Agencies;
- f. An evaluation of the trademarks to be included on the RFCS-Branded Card; and
- g. Any reductions in the Agencies' RFCS operating costs or potential revenue to the Agencies that would be realized from the Proposed Application.

16.3 An approval by the Agencies shall be evidenced by a written agreement with the Contractor and a separate written agreement with any third party, which agreements shall address but not be limited to such subjects as the timing and method for adding a non-RFCS application to the Agencies' cards; the security of the RFCS; branding; the roles and responsibilities of the Contractor, the Agencies and any third party in initializing, issuing and accepting the non-RFCS application, separate from the Agencies' issuance of the card itself; the roles and responsibilities of the Contractor, the Agencies and any third party in handling cardholder problems and customer service related to the non-RFCS application(s); the computation methodology and amount of "rent" or fees to be charged for adding the non-RFCS application(s) to the Agencies' cards and the share of same to be paid to the Agencies; cost reductions to the Agencies if transactions using the non-RFCS application are processed by the Contractor; and such other revenues and benefits to the Agencies as may be agreed upon.

16.4 Unless otherwise agreed to by the Agencies, any goods and services to be provided by the Contractor to any third party to support its non-RFCS application shall be provided under a separate contract between the Contractor and the third party and shall not be provided under this Contract or any change order or amendment hereto.

3.I-17 Agency Approval of Adding the RFCS Application to Cards Issued by the Contractor or Third Parties

17.1 General

The Agencies retain the sole right to decide whether the RFCS Application will be made available for operation on smart cards issued by the Contractor or third parties.

17.2 Institutional Customer Cards

17.2.1 If the Agencies desire that the RFCS Application be added to smart cards being issued or to be issued by one of their Institutional Customers, the Contract Administrator may direct the Contractor to add the RFCS Application to the Institutional Customer's cards, provided the cards meet the specifications required for the RFCS.

17.2.2 The Contract Administrator, the Institutional Customer and the Contractor shall meet to develop an implementation agreement to address, but not be limited to, such subjects as the Institutional Customer's selection of a card technology and supplier and compatibility with RFCS cards and systems; branding; the timing and method for adding the RFCS Application to the Institutional Customer's cards; the security of the RFCS; the roles and responsibilities of the Contractor, the Agencies and the Institutional Customer in initializing and issuing the RFCS Application, separate from the Institutional Customer's issuance of the card itself and its other card applications; the roles and responsibilities of the Contractor, the Agencies and the Institutional Customer in handling cardholder problems and customer service related to the RFCS Application, separate from the Institutional Customer's issuance of the card itself and its other card applications; cost reductions to the Agencies if transactions using the Institutional Customer's non-RFCS applications are processed by the Contractor; and such other revenues and benefits to the Agencies as may be agreed upon. Provided, however, the Contractor agrees that it shall not include a license, concession, royalty or other fee for adding the RFCS Application to the Institutional Customer's cards unless the Agencies, in their sole discretion, agree to the amount, if any, of such fees, the share of same to be paid to the Agencies and any other terms and conditions.

17.2.3 The price for any cards or services to be provided by the Contractor to an Institutional Customer shall not exceed the prices paid by the Agencies for similar goods and services provided under this Contract. Provided, however, any goods and services purchased by the Institutional Customer from the Contractor shall be provided under a separate contract between same and shall not be provided under this Contract.

17.3 Other Cards Proposed by Agencies

17.3.1 If the Agencies desire that the RFCS Application be added to smart cards being issued or to be issued by third parties other than their Institutional Customers, the Contract Administrator, the third party and the Contractor shall meet to develop an implementation agreement to address, but not be limited to, such subjects as the third party's selection of a card technology and supplier and compatibility with the RFCS cards and systems; branding; the timing and method for adding the RFCS Application to the third party's cards; the security of the RFCS; the roles and responsibilities of the Contractor, the Agencies and the third party in initializing and issuing the RFCS Application, separate from the third party's issuance of the card itself and its other card applications; the roles and responsibilities of the Contractor, the Agencies and the third party in handling cardholder problems and customer service related to the RFCS Application, separate from the third party's issuance of the card itself and its other card applications; cost reductions to the Agencies if transactions using the third party's non-RFCS applications are processed by the Contractor; and such other finder fees, revenues and benefits to the Agencies as may be agreed upon.

17.3.2 Any goods and services purchased by the third party from the Contractor shall be provided under a separate contract between same and shall not be provided under this Contract.

17.4 Other Cards Proposed by Contractor

17.4.1 If the Contractor proposes to the Agencies that the RFCS Application be added to smart cards issued by the Contractor or a third party identified by the Contractor, the Agencies may consider, among others, the following criteria in deciding whether to approve a proposed card but approval shall be subject to the Agencies' sole discretion.

- a. The nature of the proposed card and the impact on the RFCS-Branded Card;
- b. The compatibility of the proposed card with the RFCS-Branded Card;
- c. The need for the Contractor or Subcontractors to access, use, and/or disclose Use Data relating to the operation of the RFCS in connection with the card issuer, and the restrictions applicable to the Contractor's use of other personal data resulting from the other card;
- d. The value added by the proposed card to the RFCS-Branded Card;
- e. Such other criteria as the Agencies may consider relevant, including but not limited to the operation of the RFC System, the use of the RFCS-Branded Card, the protection of the Agencies' Marks, or the integrity and public image of the Agencies;

- f. An evaluation of the trademarks to be included on the proposed card;
- g. Any reductions in the Agencies' RFCS operating costs or potential revenue to the Agencies that would be realized from the addition of the RFCS Application on the proposed card.

17.4.2 Agency approval shall be evidenced by a written agreement that addresses but is not limited to such subjects as the third party's selection of a card technology and supplier and compatibility with RFCS cards and systems; branding; the timing and method for adding the RFCS Application to the third party's cards; the security of the RFCS; the roles and responsibilities of the Contractor, the Agencies and the third party in initializing and issuing the RFCS Application, separate from the third party's issuance of the card itself and its other card applications; the roles and responsibilities of the Contractor, the Agencies and the third party in handling cardholder problems and customer service related to the RFCS Application, separate from the third party's issuance of the card itself and its other card applications; cost reductions to the Agencies if transactions using the third party's non-RFCS applications are processed by the Contractor; and such other revenues and benefits to the Agencies as may be agreed upon.

17.4.3 Any goods and services purchased by the third party from the Contractor shall be provided under a separate contract between same and shall not be provided under this Contract.

CONTRACTOR'S PERSONNEL

3.I-18 Key Personnel

The table entitled "Identity, Location and Commitment of Key Personnel" is attached hereto and made a part hereof as Exhibit 7. The Contract Administrator may at any time require the Contractor to add any existing job category to the "Key Personnel" list. Key Personnel shall be required to work at the location, and at the level of effort, indicated in Exhibit 7, unless written approval of a changed location or level of effort is provided by the Contract Administrator, which shall not be unreasonably withheld. The Contract Administrator shall have the right to review the qualifications of each individual to be appointed to a Key Personnel position (including personnel employed by Subcontractors) and to approve or disapprove the use of such person in such position prior to the commencement of any Work by such individual, provided such approval shall not be unreasonably withheld. The Contractor shall propose to the Contract Administrator in writing any desired changes in Key Personnel or any significant reduction in the level of effort for such an employee. The Contractor shall not change or significantly reduce the level of effort of any Key Personnel without the

prior written consent of the Contract Administrator, which shall not be unreasonably withheld.

3.I-19 Removal of Contractor Personnel

If the Contract Administrator determines that any individual employed by the Contractor or by any Subcontractor is not performing the Work in a proper and skillful manner, then at the written request of the Contract Administrator, the Contractor or such Subcontractor shall remove such individual and such individual shall not be re-employed for any Work without the prior written consent of the Contract Administrator, which shall not be unreasonably withheld. If the Contractor or the Subcontractor fails to remove such individual or individuals or fails to furnish skilled and experienced personnel for the proper performance of the Work, then the Contract Administrator may suspend the affected portion of the Work by delivery of written notice of such suspension to the Contractor. Such suspension shall in no way relieve the Contractor of any obligation contained in the Contract or entitle the Contractor to an extension of time, additional payment or Change Order. Once compliance is achieved, the Contractor shall be entitled to and shall promptly resume the Work.

SUBCONTRACTORS

3.I-20 Subcontracts

20.1 Any Subcontractors, including any substitutions thereof, required by the Contractor in connection with the Work will be subject to prior authorization by the Contract Administrator which may not be unreasonably withheld. Each Subcontract and a cost summary, shall be subject to review by the Contract Administrator prior to the Subcontractor proceeding with the Work. The Contractor shall be responsible for the professional standards, performance and actions of all persons and firms performing subcontract Work. The cost summary to be provided under this Section 3.I-20.1 shall provide such cost or price information: as is necessary to enable the Agencies to comply with applicable law or the requirements of FTA Circular 4220.1D; and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board."

20.2 The Contractor shall submit monthly reports detailing all Work completed by Major Subcontractors during the preceding month and copies of all invoices relating thereto.

20.3 Any claim by the Contractor for additional compensation or schedule extension based on a Subcontractor's claim shall be passed on to the Contract Administrator for review only in accordance with Section 3.I-33, "Contract Claims"

and only after an independent review and determination by the Contractor that such Subcontractor's claim has merit under the terms and conditions of the Contract.

3.I-21 Assignment of Subcontractors to the Agencies

21.1 Each instrument evidencing any agreement of the Contractor with any Subcontractor shall provide, pursuant to terms in form and substance satisfactory to the Contract Administrator, that (a) the rights of the Contractor under such instrument are assigned to the Agencies contingent only upon written request from the Contract Administrator following default by the Contractor or termination or expiration of this Contract, and (b) all warranties (express and implied) of such Subcontractor shall inure to the benefit of the Agencies.

21.2 The Agencies shall not be bound by any Subcontract, and no Subcontract shall include a provision purporting to bind the Agencies. Each Subcontractor shall look only to the Contractor for the payment of any claims of any nature whatsoever arising out of the said Subcontract, and each Subcontractor shall agree not to make any claim whatsoever against the Agencies, their commissioners, directors, officers, agents, independent contractors, or employees for any Work performed or thing done by reason of said Subcontract, or for any other cause whatsoever that may arise by reason of the relationship created between the Contractor and Subcontractor by the Subcontract.

3.I-22 Responsibility for Work Performed by Subcontractors

The Contractor agrees that it is as fully responsible to the Agencies for the acts and omissions of its Subcontractors and of persons either directly or indirectly employed by them as it is for the acts and omissions of persons directly employed by the Contractor. Notwithstanding any Subcontract or agreement with any Subcontractor, the Contractor shall be fully responsible for all of the Work.

3.I-23 Major Subcontractor

Major Subcontractors may not be replaced without the prior written consent of the Contract Administrator, which shall not be unreasonably withheld. Any request to consider replacement of a Subcontractor listed in the Contractor's Revised BAFO dated June 21, 2002, who would qualify as a Major Subcontractor under this Section will not be considered, except under extenuating circumstances, as determined in the reasonable discretion of the Contract Administrator. Substitution of Major Subcontractors after the execution of this Contract (or if after execution of this Contract the Contract Administrator determines that such substitution occurred prior to execution), without the Contract Administrator's express written consent, shall constitute grounds for termination under Section 3.I-66.

3.I-24 Subcontract Records

The Contractor shall update the list of its Major Subcontractors provided in its Proposal on a quarterly basis. Subject to reasonable Subcontractor confidentiality protection requirements, the Contractor shall allow the Contract Administrator access to all Major Subcontracts and records regarding Subcontracts and shall deliver to the Contract Administrator, within ten days after execution, or the point when the Subcontractor becomes a Major Subcontractor, true and complete copies of all Subcontracts with Major Subcontractors and, within ten days after receipt of a request from the Contract Administrator, true and complete copies of all other Subcontracts as may be reasonably requested, provided that the Contractor shall only be required to provide such Subcontractor cost or price information: as is necessary to enable the Agencies to comply with applicable law or the requirements of FTA Circular 4200.1D; and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board".

3.I-25 Payment to Subcontractors

25.1 The Contractor shall pay all of its Subcontractors all invoiced amounts corresponding to Work for which the Agencies have paid the Contractor, within thirty (30) days of delivery of an undisputed invoice complying with all applicable requirements under its Subcontract. All descending tier Subcontractors shall be paid all invoiced amounts on invoices complying with all applicable requirements under their Subcontracts within ten (10) days after the above tiered Subcontractor's invoices have been paid.

25.2 The Contractor shall promptly pay each Subcontractor all amounts to which the Subcontractor is entitled in accordance with the terms of the Subcontract. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to lower tier Subcontractors in a similar manner. The Agencies shall have no obligation to pay or to see to the payment of money to a Subcontractor.

PROJECT SCHEDULE & TIME PROVISIONS

3.I-26 Project Schedule for System Development Work

26.1 Purposes

Diligent and expeditious progress and completion of the Work by the date for Full System Acceptance is required of the Contractor. Careful, adequate, accurate and complete planning and scheduling of the Work by the Contractor, both prior to the start of, and throughout, development, is vital to the success of this project for both the Contractor and the Agencies. The purposes of the Baseline Project Schedule include:

- a. Ensuring adequate planning and execution of the Work by the Contractor;
- b. Assisting the Agencies in monitoring the Contract and planning for review of project work or other activities of the transit agencies;
- c. Assessing the impact of any actual, potential or proposed schedule or scope change, including, but not limited to, the financial impact resulting from schedule changes and changes to the scope of Work;
- d. Supporting the basis for payments; and
- e. Avoiding additional costs or expenses to the Agencies.

26.2 Baseline Project Schedule

26.2.1 An initial schedule is attached hereto and made a part hereof as Exhibit 8. Within thirty (30) days after receipt of the Notice to Proceed, the Contractor shall submit to the Contract Administrator a preliminary draft of a detailed Baseline Project Schedule based on the requirements analysis. Within ninety (90) days after receipt of the Notice to Proceed, the Contractor shall submit to the Contract Administrator, for Agency approval, the Baseline Project Schedule covering the contract period from Notice to Proceed with Phase 1 through Full System Acceptance at the end of Phase 2. The Agencies' review and approval of the Baseline Project Schedule shall be accomplished under the procedures set forth in Section 3.I-27.6. Full System Acceptance shall be scheduled to occur no longer than 38.5 months following the Contract Administrator's issuance of Notice to Proceed. In preparing the Baseline Project Schedule, the Contractor shall:

- a. Identify logical connections, dependency of activities upon preceding or succeeding activities, restraints or constraints, early start date, late start date, early finish date, late finish date, and duration;
- b. Avoid scheduling any activity with an unrealistic, unduly long, or

unduly short duration. Contractor shall set reasonable durations for all activities. Contractor shall use its best efforts in good faith to minimize dependencies, minimize the number of critical paths, and schedule the project to be complete as expeditiously as reasonably possible;

c. Include a Gantt chart of sufficient detail to show how Project and Payment Milestones are intended to be met;

d. Include sub-schedules to define major portions of the entire Baseline Project Schedule. Contractor shall provide additional sub-schedules for each stage/phase of Work as required by the Contract Administrator on behalf of the Agencies. Include long-lead-time items, such as equipment that requires long fabrication time. Order these well in advance of required delivery time to sequence with the Baseline Project Schedule;

e. Obtain review of the Baseline Project Schedule by Subcontractors prior to submission to the Contract Administrator; and

f. Incorporate and include in the Baseline Project Schedule tasks to be performed by the Agencies that affect the Work, including but not limited to review, comment and return of submittals, installation of equipment, and training. The required duration for each task is as otherwise specified in the Contract.

26.2.2 Upon written approval by the Agencies in accordance with Section 3.I-27.6, the Baseline Project Schedule shall replace the initial schedule and be made a part of this Contract as the new Exhibit 8. The Baseline Project Schedule shall not be changed without the written agreement of the Agencies in the form of a Change Order issued under Section 3.I-31. The Agencies' approval of the Baseline Project Schedule shall not constitute approval or acceptance of the Contractor's means, methods, sequencing, logic, order, precedence and succession of activities or Contractor's ability to complete the Work in a timely manner. Any mistakes, errors or omissions in any schedule, including, but not limited to, mistakes, errors or omissions of logic, order, precedence, and duration, are and remain the Contractor's, except to the extent that any such mistakes, errors or omissions arise from information provided by the Agencies. Subject to Sections 3.I-28 (Agency Caused Delays) and 3.I-29 (Force Majeure), the Contractor remains wholly responsible for completing the Work within the Baseline Project Schedule or as it may be modified in accordance with a Change Order issued under Section 3.I-31.

26.3 Schedule Format

The Baseline Project Schedule and all monthly updates shall be in the following form:

- a. Gantt chart as provided by Primavera Project Planner software and the critical path method, unless otherwise approved by the Contract Administrator.
- b. Sequence of Listings: according to the chronological order of the start of each activity of Work.
- c. Scale and Spacing: Adequate to provide space for notations and revisions.
- d. Each schedule and update shall be provided in seven (7) paper copies, one electronic copy in Primavera Project Planner, and one electronic copy in PDF format. At the request of the Contract Administrator, paper copies shall be on a single sheet of paper and of sufficient size to allow legibility of schedule.

26.4 Schedule Contents

The Baseline Project Schedule shall include the dates of the Payment Milestones as set forth in Section 3.I-76. The Baseline Project Schedule shall also include the completion dates for the Project Milestones as set forth in Figure II-11.1, 11.2, and Attachment H. Sufficient information shall also be shown on the Baseline Project Schedule to enable proper control and monitoring of the Work, including but not limited to the following:

- a. the early start date, late start date, early finish date, and late finish date for each activity, with each activity defined so as to not require a duration of more than thirty (30) days, unless a longer duration is specifically prescribed in this Contract or is reasonably necessary given the nature of the activity but in no event shall the duration of such activity be longer than sixty (60) days;
- b. to the extent feasible for each activity, all applicable Contract section numbers;
- c. for each submittal or deliverable, the activities shall include the submission, review, modification of submittals and resubmittals in accordance with Section 3.I-27.5 with dates for each;
- d. for major submittals, the activities shall include work on each component part;
- e. activities to be performed by the Agencies affecting progress of the Work; and
- f. any other significant items related to the progress of the Work.

26.5 Updates of Project Schedule and Monthly Reports

26.5.1 Not later than the 10th day of each month following the submission of the Baseline Project Schedule, or more frequently as needed, the Project Schedule shall be updated and submitted to the Contract Administrator for the Agencies' review until Full System Acceptance has been achieved. An updated Project Schedule shall identify progress of the Work as of the last day of the month just completed. The monthly schedule update shall include, but not be limited to:

- a. For Work that was started or completed prior to the update, a comparison of the actual start and completion dates to the dates shown on the Baseline Project Schedule;
- b. For Work remaining to be completed at the end of an activity's scheduled duration, show the percentage of completion and the remaining time required to complete that activity;
- c. For Work that is expected to start after the update, a comparison of the expected dates to the dates shown on the Baseline Project Schedule; and
- d. Any changes to the Baseline Project Schedule agreed to by the Agencies in accordance with a Change Order since the previous updated schedule.

26.5.2 If during the course of the Work the Contractor desires or feels it necessary to make material changes in the schedule logic, these changes should be identified, highlighted, and specifically and expressly brought to the attention of the Contract Administrator along with the schedule update.

26.5.3 Each monthly schedule update shall be accompanied by a written narrative description of the Work accomplished on, and the percentage completion of, each activity as of the last day of the month just completed. Said monthly report shall identify anticipated or actual deviations from the Baseline Project Schedule, detailed explanations of the causes of the deviations, the impact of the deviations on the schedule, and a detailed description of the corrective action taken or proposed to bring the progress of the Work back in line with the Baseline Project Schedule. Additional oral or written reports shall be prepared by the Contractor at the reasonable request of the Contract Administrator for presentation to federal, state and local agencies and to the public.

26.5.4 The Agencies' review of a monthly schedule update or report shall not constitute approval or acceptance of the Contractor's means, methods, sequencing, logic, order, precedence and succession of activities or Contractor's ability to complete the Work in a timely manner. Any mistakes, errors or

omissions in any schedule or report, including, but not limited to, mistakes, errors or omissions of logic, order, precedence, and duration, are and remain the Contractor's, except to the extent that any such mistakes, errors or omissions arise from information provided after approval of the Baseline Project Schedule by the Agencies. The Agencies may, however, comment upon the monthly schedule updates and reports, and such comments shall be provided to the Contractor by the Contract Administrator. Subject to Sections 3.I-28 (Agency Caused Delays) and 3.I-29 (Force Majeure), the Contractor remains wholly responsible for completing the Work within the Baseline Project Schedule or as it may be modified in accordance with Section 3.I-31. Any comments by the Agencies regarding any schedule shall not be construed as approval or ratification, nor must the Contractor incorporate or change any schedule as a result of the Agencies' comments in the absence of a Change Order issued by the Agencies in accordance with Section 3.I-31.

26.5.5 If a monthly schedule update submitted by the Contractor includes changes affecting the achievement of a Project or Payment Milestone based on circumstances the Contractor believes warrants a schedule or payment adjustment, the Contractor shall clearly identify and justify those changes by submitting along with the update or report a Contract Claim as provided in Section 3.I-33.

26.6. Untimely Schedules and Reports

Failure on the part of the Contractor to timely provide the Baseline Project Schedule in accordance with Section 3.I-26.2 shall constitute a material breach under the Contract. The Contractor's submission of a monthly schedule update or monthly narrative report required by Section 3.I-26.5 more than twenty (20) days following its due date or its untimely submission of such documents for three consecutive months shall constitute a material breach under the Contract. Timely submission of monthly updated schedules and reports is a condition precedent to any later or subsequent claim or request for an equitable adjustment of either time or compensation related to or arising out of time, the activity performed or planned to be performed, the schedule or sequence of Work. In the event a schedule or report required by this Section is more than five (5) days late, the Agencies, in addition to all other remedies for such default, may upon five (5) days notice to the Contractor withhold up to fifty percent (50%) of any project management and other payments that are otherwise due the Contractor, with no interest accruing thereon, until the required schedules or reports are submitted.

3.I-27 Progression of System Development Work

27.1 Within fourteen (14) days after execution of this Contract by all the Agencies and the Contractor, unless a Force Majeure Delay as described in Section 3.I-29 occurs, the Contract Administrator will issue written notice to proceed on Phase 1 of System Development. The Agencies' acceptance of

completion of the BETA Test in the manner specified in Section 3.I-27.6(c) shall constitute notice to proceed with Phase 2 Work. Upon receipt of a notice to proceed, the Contractor shall promptly commence Work.

27.2 Subject to Sections 3.I-28 (Agency Caused Delays) and 3.I-29 (Force Majeure), the Contractor shall complete its Work within the completion dates set forth in the Baseline Project Schedule, or as such Schedule has been modified only upon written agreement of the Agencies in the form of a Change Order under Section 3.I-31. Subject to Section 3.I-28 (Agency Caused Delays) the Contractor shall complete its Work within the prices specified in the Price Schedule provided in Exhibit 9 which is attached hereto and made a part hereof, or as modified only upon written agreement of the Agencies in the form of a Change Order under Section 3.I-31.

27.3 The Contractor will at all times schedule and direct the Work to provide an orderly progression thereof and to achieve completion of each task within the specified time for completion in the approved Baseline Project Schedule, including furnishing such employees, materials, facilities and equipment and working such hours, including extra shifts, overtime operations, Sundays and holidays as may be necessary to achieve such completion, all in compliance with applicable governmental rules and regulations and all at the Contractor's own expense except as otherwise specifically provided for in this Contract.

27.4 If at any time the Contractor fails to complete any activity that affects the critical path, the Project Milestones identified in Section 3.I-27.6, or an Agency activity, by the completion date specified in the Baseline Project Schedule, the Contractor shall, within seven (7) days, submit to the Contract Administrator a statement as to how it plans to reorganize its work force to return to the current schedule. If the Contractor falls behind in the prosecution of the Work as indicated in the approved Baseline Project Schedule, the Contractor shall take such steps as may be necessary to improve its progress, including but not limited to increasing the number of shifts, days of work, and/or the amount of plant and equipment, all without additional costs to the Agencies. If the Contractor fails or refuses to implement such measures to bring its Work back to conformity with the approved Baseline Project Schedule, its right to proceed with any or all portions of the Work may be terminated in accordance with Section 3.I-66 of the Contract. However, should the Contract Administrator (on behalf of the Agencies) permit the Contractor to proceed, such permission shall in no way operate as a waiver of the Agencies' termination rights nor any other rights under any provision of the Contract.

27.5 Except as provided in Section 3.I-27.6, the following submittal and review process shall apply to the Contractor's deliverables specified as required contract documents in Figure II-11.6. Each deliverable submittal or resubmittal shall be submitted to the Contract Administrator and consist of seven (7) hard copies of the deliverable and one copy in CD ROM format, unless otherwise specified in

this Contract for certain deliverables. The hard copies provided by the Contractor shall be printed on 8 1/2" x 11" standard letter-size paper or 8 1/2" x 14" legal-size paper unless otherwise agreed to by the Contract Administrator.

- a. Unless otherwise specified, the Contractor shall submit a draft deliverable at least 75 days in advance of the scheduled completion date for said deliverable specified in the approved Baseline Project Schedule. Provided, however, satisfaction of this submittal deadline shall not relieve the Contractor of its obligation to complete the task by the date specified in the approved Baseline Project Schedule.
- b. Within 45 days after the Contractor submits the copies of the draft deliverable to the Contract Administrator, the parties' representatives shall meet to discuss the draft. All meetings shall be held in the Seattle area unless otherwise agreed by the Contract Administrator. The Contractor shall be represented at each such meeting by personnel with sufficient technical knowledge and expertise to address all aspects and contents of the deliverable.
- c. If the deliverable has been satisfactorily completed in accordance with the provisions of the Contract Documents (hereinafter, "Contract requirements"), the Contract Administrator shall issue a Notice of Apparent Completion ("NAC"). If the deliverable has not been satisfactorily completed in accordance with the Contract requirements, the Contract Administrator shall provide written comments to the Contractor within seven (7) days after the meeting. If the deliverable requires revision, the Contractor shall submit a revised deliverable within fifteen (15) days after receipt of the written comments.
- d. If the deliverable has not been satisfactorily completed in accordance with the Contract requirements, the Contract Administrator (on behalf of the Agencies) may require further iteration(s) of the deliverable from the Contractor. If further iterations are required, the Contract Administrator will provide timely written comments on the aspects of the deliverable which the Agencies do not regard as satisfactorily completed in accordance with the Contract requirements. The Contractor shall continue to modify the deliverable until the deliverable has been satisfactorily completed in accordance with the Contract requirements, at which point the Contract Administrator shall issue a NAC.
- e. If the parties disagree as to whether a deliverable has been satisfactorily completed in accordance with the Contract requirements, the Contractor may submit the issue to the Dispute Review Board in accordance with Section 3.I-34 of this Contract.
- f. If the Contractor is not issued a NAC for a deliverable by the date

specified for completion in the approved Baseline Project Schedule, the Agencies, in addition to any other remedies, may withhold up to 50% of any project management and other payments due for any Work, with no interest accruing thereon, until the deliverable has been satisfactorily completed in accordance with the Contract requirements, at which point a NAC shall be issued for the deliverable.

27.6. The following process shall apply to the Agencies' determination of whether the Contractor has completed the Project Milestones (Figure II-11.1 and 11.2; Attachment H) and the Payment Milestones (Section 3.I-76) in accordance with the Contract requirements.

- a. When the Contractor believes it has completed a Project and/or Payment Milestone (both referred to herein as a "Milestone"), the Contractor shall submit to the Contract Administrator a written notice of same along with all relevant documentation establishing its belief that the Work within that Milestone has been completed in accordance with the Contract requirements.
- b. Within forty-five (45) days after the Contractor submits such notice and documentation, the parties' representatives shall meet to discuss the status of the Milestone.
- c. If the Milestone has been completed in accordance with the Contract requirements, the Contract Administrator shall issue a NAC. If the Milestone has not been completed in accordance with the Contract requirements, the Contract Administrator shall provide timely written comments on the aspects of the Milestone which the Agencies do not regard as completed in accordance with the Contract requirements and the Contractor shall continue its Work on the Milestone activity until it has been completed in accordance with the Contract requirements, at which point the Contract Administrator shall issue a NAC.
- d. If the parties disagree as to whether a Milestone has been completed in accordance with the Contract requirements, the Contractor may submit the issue to the Dispute Review Board in accordance with Section 3.I-34.
- e. If the Contractor is not issued a NAC for a Milestone within the date specified in the approved Baseline Project Schedule, the Agencies, in addition to any other remedies, may withhold any project management and other payments due for any Work, with no interest accruing thereon, until a NAC is issued for the Milestone. Provided, however, if the DRB makes a recommendation in accordance with Section 3.I-34 that a Payment Milestone has been completed in accordance with the Contract requirements, but the Agencies do not accept that recommendation, the Agencies shall pay 50% of the Milestone Payment pending final resolution

of the dispute in accordance with Section 3.I-64.11 (Applicable Law and Jurisdiction). The parties further agree that subject to Sections 3.I-28 (Agency Caused Delays) and 3.I-29 (Force Majeure), the Contractor's failure to timely obtain a NAC for the following Milestones shall constitute a material breach of the Contract and shall constitute grounds for terminating the Contract in accordance with Section 3.I-66.

Phase 1

Completion of Baseline Project Schedule

Completion of Final Design

Completion of Factory Acceptance Testing

Completion of System Integration Testing

Completion of System Integration Testing for Modified Systems and Equipment

Completion of BETA Test Readiness

BETA Test Acceptance

Phase 2

Completion of Complete System Commissioning

Completion of Complete Operator Training

Full System Acceptance

27.7 Neither the Contract Administrator's issuance nor refusal to issue a NAC as to a particular deliverable or Milestone shall affect the Contractor's obligation to complete its entire system development Work within the Project Schedule. In the event the Contract Administrator does not issue a NAC, the Contractor shall continue Work on other elements at its own judgment and risk, unless the Agencies stop or suspend the Work in whole or in part as provided herein. The Agencies' and the Contract Administrator's reviews, comments, approvals, acceptances or issuance of a NAC (1) shall not constitute a release or relieve the Contractor from full responsibility for performance of the Work within the approved Baseline Project Schedule and in conformance with all provisions of this Contract; (2) shall not be regarded as an assumption of risks or liability by the Agencies or by the Contract Administrator, or any other employee or representative, on behalf of the Agencies; (3) shall not constitute a waiver, modification or exclusion of any express or implied warranty or any right under

this Contract or in law; or (4) shall not constitute a representation by the Agencies or the Contract Administrator that the Contractor will be able to proceed or complete the Work in accordance with the dates contained in said schedule.

27.8 The Agencies are responsible for the costs of making available the staff, equipment, vehicles, supplies and other resources that may be necessary for the review of deliverables, installation of equipment, training and other activities under this Contract (herein, "mobilization costs"). In addition to any other remedies available to the Agencies, the Contractor shall reimburse the Agencies for any reasonable mobilization costs that arise from or are caused by the Contractor's failure to start and finish an activity on the day(s) designated in the approved Baseline Project Schedule, subject to Sections 3.I-28 (Agency Caused Delays) and 3.I-29 (Force Majeure).

3.I-28 Agency Caused Delays

28.1 Agency Caused Delays are delays that affect a Critical Path as defined in the approved Baseline Project Schedule and arise from the following matters and no others: (a) a suspension order pursuant to Section 3.I-30 not caused by the actions or inactions of the Contractor, (b) failure or inability of the Agencies to obtain the permits it agrees in its sole discretion to obtain, (c) failure of the Agencies to provide availability of Transit/Ferry facilities according to the schedule for such availability provided by the Agencies, (d) failure of the Agencies to provide operation rules in a timely manner, (e) unavoidable delay caused by governmental action which is beyond the control of and could not have been reasonably anticipated by the Contractor, (f) failure of the Agencies to comply with Section 2.2(c), or (g) any additional Work requested by the Agencies. Any court order to suspend Work shall not be considered an Agency Caused Delay (although it may qualify as a Force Majeure Event) despite the fact that the Agencies may specifically direct the Contractor to comply with the court order.

28.2 To the extent an Agency Caused Delay impacts the Critical Path specified in the approved Baseline Project Schedule, the Contractor shall be entitled to an equitable adjustment to the schedule and/or additional compensation subject to the Contractor's compliance with the Contract Claims provisions of Section 3.I-33.

28.3 Under no circumstances, during the performance of the Work, will the Agencies assume responsibility for any delay, interruption or damages caused by or arising from the actions of the Contractor, its employees, agents, officers or subcontractors or any other persons for whom the Contractor may be legally or contractually responsible.

3.I-29 Force Majeure Delays

29.1 The term "Force Majeure Event" shall include, without limitation by the following enumeration: Acts of Nature, acts of civil or military authorities, acts of war and terrorism, fire, accidents, shutdowns for purpose of emergency repairs, strikes, and other labor disruptions and any other industrial, civil or public disturbance, that are not reasonably within the control of a party, causing the inability to perform its obligations under this Contract. If any party is rendered unable, wholly or in part, by a Force Majeure Event, to perform or comply with any obligation or condition of this Contract then, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent reasonably necessary to allow for performance and compliance and restoration of normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then the Agencies shall be entitled to exercise remedies otherwise provided for in this Contract or by law, including termination for default. Provided, however, nothing in this Section 3.I-29 shall be construed to suspend the Contractor's obligation to perform, or relieve or excuse the Contractor's failure to perform, the Work during or after a Force Majeure Event to the extent continued performance of the RFCS during or after such an Event is required by the System Security Plan, the System Backup and Disaster Recovery/Business Resumption Plan or other Contract requirements.

29.2 The Contractor shall be granted an extension of time for delays, and shall not be assessed damages for any portion of the delay in performance and completion of the Work , caused by Force Majeure Events; provided that the Contractor has established that the Work would have been timely completed or delivered but for the Force Majeure Event; that the Contractor had taken such precautions to prevent Force Majeure Event delays/interruptions as required by the Contract or consistent with the professional standards of persons and firms with specialized knowledge, expertise and experience who are leading designers and providers of systems, software and hardware in the automated smart card fare payment industry; and provided that the Contractor shall strictly comply with the notice and the other contract claims procedures set forth in Section 3.I-33. Force Majeure Events for which extensions of time have been granted shall not be the basis for additional compensation for any of the Contractor's costs.

3.I-30 Temporary Suspension of Work

30.1 The Agencies, in their sole discretion, reserve the right to stop or suspend all or any portion of the Work for such period as the Agencies may deem necessary in good faith. The suspension may be due to the failure on the part of the Contractor to carry out orders given or to perform any provision of the Contract or to factors that are not the responsibility of the Contractor. The Contractor shall comply immediately with the written order of the Contract Administrator to suspend the Work wholly or in part. The suspended Work shall

be resumed when the Contractor is provided with written direction from the Contract Administrator to resume the Work.

30.2 If the suspension is due to the Contractor's material failure to perform Work or carry out its responsibilities in accordance with this Contract, or other material action or omission on the part of the Contractor, all costs shall be at the Contractor's expense and no schedule extensions will be provided by the Agencies.

30.3 In the event of a suspension of the Work, the Contractor shall not be relieved of the Contractor's responsibilities under this Contract, except the obligations to perform the Work which the Contract Administrator has specifically directed the Contractor to suspend under this Section.

30.4 If the suspension is not the responsibility of the Contractor, suspension of all or any portion of the Work under this Section may entitle the Contractor to compensation and/or schedule extensions subject to the requirements of this Contract.

3.1-31 Change Orders

31.1 A written Change Order is the means by which the Contract Administrator on behalf of the Agencies may, at any time, without notice to the sureties, unilaterally direct the Contractor to make any change in the scope of Work of this Contract. A written Change Order is also the means by which the Contract Administrator on behalf of the Agencies may agree to changes in the Contractor's compensation or Baseline Project Schedule in granting a Contract Claim in whole or in part. No oral order or conduct by the Agencies will constitute a Change Order unless confirmed in writing by the Contract Administrator.

31.2 If any Change Order causes an increase or decrease in the cost of, or the time required for performance of any part of the Work under this Contract, an equitable adjustment in the Contract price, the Project Schedule, or both shall be made and the Contract modified in writing accordingly. Any adjustment increasing or decreasing the Contract price which cannot be determined by a unit price in the Price Schedule shall be fair and reasonable and determined as follows:

- (i) by a lump sum price agreed upon by the Contract Administrator on behalf of the Agencies and the Contractor; or failing agreement upon a lump sum price then
- (ii) by new unit, separate or other prices agreed upon by the Contract Administrator on behalf of the Agencies and the Contractor; or failing agreement upon such new unit, separate or other prices then

(iii) by the reasonable labor and material costs incurred by the Contractor in performing the Change Order but only to the extent that the Contractor can establish to the satisfaction of the Contract Administrator on behalf of the Agencies, acting reasonably, that they are clearly and solely attributable to the approved Change Order for which compensation is being sought. Labor costs shall be calculated initially by multiplying the actual hours reasonably required for the repair by the applicable hourly labor rate for the person performing the Work as provided in the Project Staff Positions and Hourly Rates table set forth in Exhibit 9, Section XVII. Said hourly rates shall be presumed to be reasonable unless otherwise determined through a cost/price analysis conducted as provided under Section 3.I-32. Material costs shall be the reasonable cost of the material and a reasonable material mark-up for overhead/profit not exceeding 31.3%.

In any event, the Contractor shall provide such cost or price information: as is necessary to enable the Agencies to comply with applicable law, the requirements of FTA Circular 4220.1D; and/or as is required under Section 3.I-33 "Contract Claims" and Section 3.I-34, "Dispute Review Board."

31.3 If the Contractor seeks a lesser adjustment than that provided in an Agency Change Order decreasing the Work, or a greater adjustment than that provided in an Agency Change Order increasing the Work, the Contractor must assert its right to a different price and/or schedule adjustment by filing a written Contract Claim, in the form set forth in Section 3.I-33, within fourteen (14) working days after receipt of a written Change Order from the Contract Administrator. Upon request from the Contractor, the Contract Administrator (on behalf of the Agencies) may extend the 14-working day period. Provided, however, the Contractor is barred from submitting a Change Order Contract Claim after submittal of a Payment Milestone invoice if the Change Order was received by the Contractor prior to the date the Contractor issued the invoice.

31.4 If the Agencies initiate a Change Order that is reasonably estimated by either party to warrant a price increase of at least \$100,000, the parties shall attempt to negotiate an agreed upon price adjustment. If the Contractor does not agree with the Agencies' proposed price adjustment for such a major Change Order and files a Contract Claim in accordance with Section 3.I-33, the Contractor shall not be required to commence work on the Change Order until either (1) the Contractor and the Agencies reach agreement on the amount of the adjustment; or (2) the Agencies agree to an adjustment amount recommended by the DRB.

31.5 Price adjustments included in a Change Order shall be reflected in the amount due under the Payment Milestone or monthly Project Management payment that most closely relates to the type of Work being performed under the Change Order.

31.6 All Change Orders shall be implemented in accordance with the Disadvantaged Business Enterprise (DBE) compliance provisions herein.

3.I-32 Cost/Price Analysis

32.1 A price and/or cost analysis may be required by the Contract Administrator on behalf of the Agencies for the evaluation of Change Orders, terminations, revisions to Contract requirements or other circumstances as necessary to enable the Agencies to comply with applicable law, the requirements of FTA Circular 4220.1D; and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board." But notwithstanding this Section 3.I-32.1 and any sections of the Contract or its Exhibits that may require disclosure of any cost or price information, other than Section 76 and the Price Schedule Exhibit for Project Management Administration and Performance Security expenses (for which the Contractor is required to provide cost and price information and documentation), the Contractor shall not be required to provide any cost or price information for the labor hourly rates, equipment prices and other prices listed at the time of Contract execution in Exhibit 9, "Price Schedule."

32.2 Price analysis and cost analysis and are generally described but not limited by the following:

(a) Price Analysis

Price analysis means the process of examining and evaluating a proposed price without evaluating its separate cost elements and proposed profit.

(b) Cost Analysis

Cost analysis means the review and evaluation of the separate cost elements and proposed profit of the Contractor's cost or pricing data. Cost analysis is the application of judgment utilizing criteria to project from the data to the estimated costs in order to form an opinion on the degree to which the proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. Cost analysis may require an on-site visit by the Contract Administrator or designee to review company books and records as they relate to this project.

3.I-33 Contract Claims

33.1 The Contractor may file a Contract Claim as provided herein if the Contractor requests or believes for any reason that it is entitled to: additional compensation or an extension to the Baseline Project Schedule, including but not limited to in response to a Change Order; or less of a reduction in compensation or schedule due to a change in the scope of Work, including but not limited to in response to a Change Order. The Contractor shall not be entitled to any additional compensation or to any extension to the Baseline Project Schedule

unless the Contractor provides the Contract Administrator with a written notice of claim, in accordance with the following requirements, no later than fourteen (14) working days after receipt of a Change Order or thirty (30) days after the Contractor becomes, or should have become, aware of any other circumstance giving rise to a Contract Claim. Provided, however, the Contractor is barred from submitting a Contract Claim after submittal of a Payment Milestone invoice if the circumstance giving rise to the Contract Claim occurred prior to the date of the invoice; and in no event may the Contractor submit a Contract Claim after submitting an invoice for final payment after Full System Acceptance.

33.2 The Contract Claim shall include the following information:

- a. A detailed factual statement of the Contract Claim for additional compensation and time, if any, or less of a reduction, providing all necessary dates, locations, and items of Work related to the Contract Claim;
- b. The dates of all facts related to the Contract Claim, as well as the names of individuals knowledgeable about the Contract Claim;
- c. References to specific provisions of the Contract that support the Contract Claim and a statement of the reasons why such provisions support the Contract Claim;
- d. Identification of any documents and the substance of any oral communications that support the Contract Claim;
- e. If an extension of time is sought:
 - (i) The specific days and dates for which it is sought;
 - (ii) The specific reasons the Contractor believes a time extension should be granted; and
 - (iii) The specific provisions of the Contract Documents under which it is sought; and
- f. If additional compensation or a lesser reduction is sought by the Contractor, the exact amount sought and substantiating details shall be provided by the Contractor, including, but not limited to, the Contractor's and any Subcontractor's material costs, staff classifications and billing rates, and labor hours, which would allow the Agencies to determine whether the amount sought was fair and reasonable. The Contractor shall only be required to provide copies of documents supporting these cost details as is necessary to enable the Agencies to comply with applicable law, the requirements of FTA Circular 4220.1D and/or as provided in Section 3.I-34, "Dispute Review Board."

33.3 The Contract Claim shall contain the following notarized statement:

Under the penalty of law for perjury or falsification, the undersigned,
_____, _____ of
(name) (title)
_____ (company) hereby certifies that the
Contract Claim for extra compensation and time, if any, made herein
for Work on this Contract is a true and complete statement of the
factual basis of the Contract Claim and all actual costs incurred and
time sought, and is fully documented and supported under the contract
between the parties.

33.4 The Contract Administrator may request, and the Contractor shall promptly provide, any additional information or documentation reasonably necessary for the evaluation of the Contract Claim provided that the Contractor shall only be required to provide copies of documents supporting these cost details as is necessary to enable the Agencies to comply with applicable law, the requirements of FTA Circular 4220.1D or as provided in Section 3.1-34, "Dispute Review Board." If requested to do so by the Contract Administrator, the Contractor shall meet and discuss the Contract Claim with the Contract Administrator or any other representative of the Agencies involved in the evaluation of the Contract Claim.

33.5 The filing of a Contract Claim by the Contractor shall neither postpone nor abate in any manner the Contractor's duty to perform the Work in accordance with the provisions of this Contract.

33.6 The Contract Administrator shall provide the Agencies' formal response to a Contract Claim within forty-five (45) days after receiving a claim from the Contractor that complies with the requirements set forth above, as well as any additional information provided by the Contractor at the Contract Administrator's request. The parties may mutually agree in writing to extend the time limit required for a formal response.

33.7 If the Contract Administrator fails or refuses to respond within such time, the Contract Claim shall be deemed rejected by the Agencies on the last day of the period within which the Contract Administrator was required to act upon the claim. The Contractor may refer a rejected Contract Claim to the Dispute Review Board ("DRB") within fourteen (14) days following the rejection of the Contract Claim. The Contractor's failure to refer its Contract Claim to the DRB within the required timeframe shall constitute a complete waiver of and bar to said Contract Claim.

33.8 If the Agencies grant a Contract Claim, in whole or in part, or if the Agencies agree with a DRB recommendation to grant such a claim, the Contract Administrator shall process an appropriate Change Order.

33.9 The Contractor's failure to comply with the Contract Claim requirements set forth above shall bar the Contractor from asserting any claim or right to additional compensation, time, damages, and/or any other relief sought by the Contractor from the Agencies.

3.I-34 Dispute Review Board

34.1 The parties shall establish a Dispute Review Board ("DRB") to assist them in resolving "Disputes" which shall be limited to disputes over (1) whether a deliverable has been satisfactorily completed (Section 3.I-27.5) or a Project or Payment Milestone has been completed (Section 3.I-27.6); and (2) Contract Claims by the Contractor for a schedule extension or more compensation, or less of a reduction, due to additional, changed, extra, deleted or delayed Work under the Contract (Section 3.I-33).

34.2 The DRB shall consist of one member nominated by the Agencies and approved by the Contractor, one member nominated by the Contractor and approved by the Agencies, and a third member nominated by the first two members and approved by both the Agencies and the Contractor. The third member of the DRB shall serve as Chair. All DRB members and the authorized representatives of the Agencies and the Contractor shall execute a DRB Multi-Party Agreement within two weeks after the selection of the third DRB member.

34.3 The parties shall ensure that DRB members are experienced with: (i) smart card technology or substantial knowledge of technology generally; (ii) general knowledge of transit operations, including but not limited to coach equipment, system integration, fare sets, and reporting; (iii) interpretation of contract documents; (iv) project management, including but not limited to scheduling and change orders; and (v) resolution of contract disputes.

34.4 The Contract Administrator will provide a set of contract specifications to each DRB member. The parties shall keep DRB members informed of the progress of the project, including completion of Project Milestones, and other developments by means of timely transmittal of relevant information prepared by the Agencies or the Contractor in the normal course of the Contract's progression, including but not limited to periodic progress reports and minutes of progress meetings. The DRB will visit the project site, if possible, and meet with representatives of the Agencies and the Contractor. Typically, such visits and meetings will be quarterly, unless otherwise agreed by the Contract Administrator (on behalf of the Agencies) and Contractor, or unless one of the parties refers a dispute to the DRB.

34.5 Each DRB meeting shall consist of an informal roundtable discussion followed by a field observation of the Work, if applicable. Personnel of the Agencies and the Contractor will attend the roundtable discussion. The agenda will generally include the following:

- a. Meeting convened by the Chairman of the DRB.
- b. Contractor discussion items:
 - (i) Work accomplished since the last meeting;
 - (ii) current status of the Baseline Project Schedule and schedule of future Work;
 - (iii) anticipated or potential problems and proposed solutions;
 - (iv) status of current and potential Disputes.
- c. Agency discussion items:
 - (i) the Baseline Project Schedule;
 - (ii) perspectives on potential Disputes;
 - (iii) status of past Disputes,
- d. Such other items as the parties may wish to discuss with the DRB.
- e. Set date for next meeting(s).
- f. Field observation of the Work, if applicable. The DRB shall be accompanied by representatives of both the Agencies and Contractor during any field observations of project work.

34.6 Either party may refer a Dispute to the DRB. Except as otherwise provided in this Contract, a party shall refer a Dispute to the DRB no later than seven (7) days after the event giving rise to the Dispute. Requests for DRB review shall be submitted in writing to the Chair of the DRB. The Request for Review shall state clearly and in full detail the specific issues of the Dispute to be considered by the DRB, including, but not limited to: (a) a summary and description of the Dispute; (b) the positions of the Agencies and Contractor; (c) identification of the relevant specifications, drawings, and/or other documents; (d) identification of the personnel involved in the Dispute; (e) whether the party desires the Dispute to be considered at the next regular DRB meeting or at a special meeting; and (f) the relief or decision requested by the referring party. A copy of the Request for Review shall be simultaneously provided to the other party, who may respond to the Request. If the Dispute involves a Contract Claim seeking a greater price increase than the Agencies agree to, or a lesser price decrease for a deletion of Work, the Contractor shall produce for the Agencies and the DRB, copies of all supporting documents that relate to the Contractor's cost details as required to be provided under Section 3.1- 33.2(6), "Contract Claims."

34.7 After conferring with both parties, the DRB Chair will establish a schedule for the other party to respond to the requesting party's statement, for the DRB members to review both statements and the supporting documentation before the hearing, and for a hearing consistent with the purpose of the DRB to decide Disputes quickly and efficiently at minimum of additional expense to the parties. The DRB will decide the Dispute by majority vote, each member having one vote. The DRB's written decision will be provided to both the Agencies and the Contractor within ten (10) days after completion of the hearing. The decision shall be signed by all participating DRB members, whether concurring or

dissenting. Decisions of the DRB are not binding on either the Agencies or the Contractor.

34.8 The Contractor shall proceed diligently with the Work and comply with all applicable Contract provisions while the DRB considers a Dispute. Under no circumstances shall the pendency of a Dispute justify a delay or suspension of performance of the Work, except by mutual written agreement.

34.9 The Agencies and the Contractor shall share the fees and expenses of all members of the DRB equally. The Agencies shall pay the invoices of all DRB members after approval by both the Agencies and the Contractor. The Contract Administrator will then bill the Contractor for fifty percent of such invoices. The Contract Administrator, at the Agencies' expense, will prepare and mail minutes of DRB meetings and may provide administrative services such as conference facilities for the purposes of meetings and hearings. If the DRB desires special services such as legal or other consultation, accounting, data research, and the like, both the Agencies and the Contractor must agree, and the costs will be shared by them equally.

INTELLECTUAL PROPERTY

3.I-35 Intellectual Property

35.1 General

35.1.1 This Section 35 and the escrow provisions in Exhibit 10 are intended to address the parties' rights in all the Intellectual Property that is used, provided, conceived, discovered, created, or reduced to practice in the Contractor's performance of the Work. Such Intellectual Property shall consist of the following and any Updates and Upgrades thereto.

- a. DDU IP
- b. RCU IP
- c. Contractor IP
- d. RFCS IP
- e. Third Party IP
- f. Use Data

g. Use Data Reports created or provided by the Contractor or its Subcontractors

h. Contract Deliverables.

35.1.2 The Contractor represents and warrants that ownership of all Intellectual Property provided by the Contractor other than Third Party IP, RCU Background IP, the smart cards and the RFCS trademarks, Use Data and Use Data Reports, whether in existence at the commencement of this Contract or created under this Contract, is now, or shall be upon creation, vested in ERG R&D Pty Ltd, another wholly-owned subsidiary of ERG Limited. The Contractor represents and warrants that it has entered into a technology transfer agreement with ERG R&D Pty Ltd., has obtained licenses for Third Party IP or has otherwise taken the necessary steps that provide all rights necessary for Contractor to perform all of its obligations under this Contract including but not limited to granting to the Agencies the licenses referred to under this Section and entering into the escrow agreement as provided in this Contract. Concurrent with the execution of this Contract, ERG R&D Pty Ltd shall acknowledge, in the form attached hereto as Exhibit 11, that the Contractor has been granted all rights in existing and future Intellectual Property necessary for Contractor to grant the licenses and perform the other obligations under this Contract.

35.1.3 Notwithstanding any provision of this Section 35, the United States Government shall have the rights to Intellectual Property set forth in Section 5.I-14 of this Contract.

35.1.4 In designing, developing, implementing, operating, modifying and maintaining the RFC System, and in performing its obligations under the Contract, the Contractor shall ensure that there is no misappropriation, infringement or other violation of any Intellectual Property rights of any third party. The Contractor shall be responsible for obtaining all required licenses, for the benefit of the Agencies, to ensure that there is no misappropriation, violation or other infringement of any Intellectual Property rights.

35.1.5 Contractor warrants that, with respect to all personnel performing services related to this Contract who are not employees of Contractor, Contractor shall have acquired, prior to the performance of services by such individuals, all possible ownership and Intellectual Property in and to any Intellectual Property to be created in whole or in part by such individuals pursuant to this Contract.

35.1.6 Contractor will take all appropriate action required or requested by the Contract Administrator to perfect and protect the Agencies' rights in Intellectual Property obtained under this Contract, including but not limited to executing documents required for applications for patents, copyright registrations, and trademark registrations, using appropriate proprietary notices, and keeping confidential all trade secret information.

35.1.7 All rights and licenses granted to one or more Agencies under this Contract are, and shall be deemed to be, for purposes of Section 365(n) of the United States Bankruptcy Code (the "Code"), licenses to rights to "intellectual property" as defined under the Code. The parties agree that each Agency, as a licensee of such rights under this Contract, shall retain and may fully exercise all of its rights and elections under the Code. The parties further agree that, in the event of the commencement of bankruptcy proceedings by or against ERG Limited, ERG R&D Pty Ltd and/or the Contractor under the Code, each Agency shall be entitled to retain all of its rights under this Contract.

35.1.8 The licenses and rights granted to one or more Agencies under this Section 3.1-35 and Exhibit 10, Escrow Provisions, shall survive and remain in full force and effect notwithstanding any expiration or termination of this Contract, except to the extent Third Party IP license rights may be specific to a particular unit of equipment and are limited in duration to the life of that particular unit under the terms of the Third Party's license. The parties specifically agree that the following sections shall survive any expiration or termination of this Contract:

Section 1 and Exhibit 1	Definitions
Section 35	Intellectual Property
Section 55.3	Title Warranties
Section 60.1	Patent, Trade Secret, and Copyright Warranties
Section 60.3	Date Warranty
Section 60.4	Illicit Code
Section 63	No Waiver of Warranties and Contract Rights
Section 64	Legal Relations
Section 5.1-14	Rights in Data and Copyrights
Exhibit 10	Escrow Provisions

35.2 Driver Display Unit ("DDU")

35.2.1 The DDU will be comprised of Contractor IP, Third Party IP and DDU IP, and the Contractor shall provide a listing of the elements of the DDU that comprise each type of IP. The Contractor IP and the DDU IP shall be owned by

ERG R&D Pty Ltd and licensed to the Contractor as described above in Section 35.1.2.

35.2.2 The Contractor is required under Section 6.III-6.8 to provide to the Agencies software tools, interface specifications, documentation, information and other materials related to the DDU, other than any third party software toolkits. (For clarification, the parties agree that said Section 6.III-6.8 does not require the Contractor to provide to the Agencies directly, rather than deposit in escrow, the source code for software in the DDU that is Contractor IP.) To the extent such materials constitute Contractor IP, Third Party IP, and the IP Materials for each, the Contractor hereby grants to each Agency, at no additional cost, a perpetual, non-exclusive, transferable, sublicenseable, paid-up and royalty free license within the Territory to use, copy and store, in any media now known or hereafter developed, said materials for the purposes of (a) installing, operating, maintaining, modifying, updating, upgrading and creating Derivative Works from non-RFCS applications or systems operating on, or interfacing with, the DDU; and (b) modifying the DDU user interface to the extent such modification, while this Contract is in effect, does not change the fare collection control flow of the DDU. Provided, however, Contractor shall only be required to provide, and secure license rights to, such Third Party IP and IP Materials for Third Party IP as the Third Party makes available without any further charge to its customers. The license rights granted under this Section may be sublicensed by an Agency, for the purposes set forth in this Section 35.2.2., to Agency Consultants, other Agency third party contractors, and new members that join the RFCS. The license rights granted under this Section are in addition to any other rights granted under this Contract for Contractor IP, Third Party IP, and the IP Materials for each.

35.2.3 The Contractor hereby grants to each Agency, at no additional cost, a perpetual, non-exclusive, transferable, sublicenseable, paid-up and royalty free license within the Territory to use, copy, maintain, modify, update, upgrade and create Derivative Works from the DDU IP and the IP Materials for the DDU IP, for the purposes of installing, operating, maintaining, and modifying the DDU and both RFCS and non-RFCS applications or systems operating on, or interfacing with, the DDU. Said license rights may be sublicensed by an Agency, for the purposes set forth in this Section 35.2.3, to Agency Consultants, other Agency third party contractors, and new members that join the RFCS.

35.2.4 If an Agency determines a need to modify an existing application on the DDU, modify the licensed DDU IP, or add a new application or system on, or interfaced with, the DDU, the Contract Administrator shall obtain the Contractor's certification, as provided in Section 6.III-6.8.5, in advance of an Agency installing any modifications or operating a new application or system so long as this Contract has not expired or been terminated. Contractor certification shall not be unreasonably withheld or delayed. For clarification, an Agency's changes to the appearance of the DDU screen, that do not change functionality, shall not require

Contractor certification. Upon an Agency's request, the Contractor shall provide technical support to an Agency, Agency Consultant or Agency third party contractor modifying the DDU or developing a new or modified application or system to operate on, or interface with, the DDU. The Contractor shall perform any such technical support and any required certification in accordance with a written Change Order. An Agency shall be responsible for obtaining from any involved Agency Consultant or Agency third party contractor the interface specifications or other documentation needed for the Contractor to perform any requested technical support or any required certification. In the event the Contractor requires license rights from an Agency Consultant or Agency third party contractor in order to perform an obligation under this Contract, the Contract Administrator shall use its reasonable efforts to obtain said license rights. The Contractor shall be excused from performing an obligation to the extent performance requires such license rights that were not obtained by the Contract Administrator. The Contractor agrees that it will take reasonable protective measures to prevent the disclosure of such documentation and execute a nondisclosure agreement with the Agency and any Agency Consultant or third party contractor that provides such documentation, subject to the same terms and provisos as apply to the Agencies under Section 35.2.8.

35.2.5 Should Contractor determine a need to modify an existing application on the DDU, modify the licensed DDU IP or add a new application on the DDU as deployed or in operation for the RFC System, it shall only do so with the written agreement of the Contract Administrator, which agreement shall not be unreasonably withheld or delayed. Such written agreement shall include a description of the modification and the acceptance process for the modification, including testing. No modification shall disrupt the then-existing functions of, and applications or systems operating on, or interfacing with, the DDU.

35.2.6 The Contractor shall provide to the Agencies all IP Materials for all DDU IP, and for all Updates and Upgrades of such DDU IP as follows:

Prior to Full System Acceptance: At such time as the Contractor submits written notice of completion of a Project or Payment Milestone to the Contract Administrator, the Contractor shall also provide IP Materials, whether in draft or final format, for any DDU IP provided prior to completion of that Milestone.

After Full System Acceptance: Every six months following Full System Acceptance, or sooner at the Contract Administrator's reasonable request, the Contractor shall provide the Contract Administrator with any IP Materials for new or modified DDU IP and applications, including but not limited to any DDU IP Updates and Upgrades, provided by the Contractor since the previous delivery.

35.2.7 The Contractor shall provide the materials referenced in Section 35.2.2 as required in Section 35.2.6. The Contractor's obligations to provide IP Materials for Contractor IP and Third Party IP are set forth in Sections 35.4.3(d) and 35.4.5(c).

35.2.8 Except for General Public Documentation, third party software and public domain software, the Agencies shall take reasonable protection measures to prevent the DDU IP from being disclosed to third parties other than those to whom sublicenses and transfers are permitted under this Contract. The Agencies shall require such other permitted third parties to sign nondisclosure agreements requiring that they also undertake reasonable protection measures. Provided, however, this subsection shall impose no obligation on the Agencies regarding the DDU IP to the extent any portion of it (a) was in the possession of the Agencies without a confidentiality obligation prior to delivery from the Contractor; (b) is or becomes generally known to the public without violation of this Contract; (c) is obtained by the Agencies in good faith from a third party having the right to disclose; or (d) is independently developed by one or more of the Agencies or their contractors without the participation of individuals who have access to the items covered by this subsection.

35.3 King County Radio Control Unit

35.3.1 The Contractor shall provide a listing of the RCU Developed IP. The RCU Developed IP shall be owned by ERG R&D Pty Ltd and licensed to the Contractor as described above in Section 35.1.2.

35.3.2 The Contractor hereby grants to King County, at no additional cost, license rights in the RCU Developed IP and the IP Materials for the RCU Developed IP that are as broad as the rights of the owner, including but not limited to a perpetual, non-exclusive, transferable, sublicenseable, paid-up and royalty free license to use, copy, maintain, modify, update, upgrade and create Derivative Works from the RCU Developed IP and the IP Materials for the RCU Developed IP. Said license rights may be transferred or sublicensed by King County to any person or entity at the County's discretion for any purpose.

35.3.3 If King County determines a need to modify the RCU Developed IP during the Warranty Period, the Contract Administrator shall obtain the Contractor's certification in advance of the County installing any modification. Contractor certification shall not be unreasonably withheld or delayed. Upon King County's request, the Contractor shall provide technical support to the County or any third party developing a new or modified application for the RCU and shall perform such technical support and any required certification in accordance with a written Change Order.

35.3.4 The Contractor shall provide to King County all IP Materials for the RCU Developed IP, and for any Updates and Upgrades of same. Contractor shall provide said IP Materials as follows:

Prior to Full System Acceptance: At such time as the Contractor submits written notice of completion of a Project or Payment Milestone to the Contract Administrator, the Contractor shall also provide IP Materials for any RCU Developed IP created or provided prior to completion of that Milestone.

After Full System Acceptance: Every six months following Full System Acceptance, or sooner at the Contract Administrator's reasonable request, the Contractor shall provide King County with any IP Materials for any new or modified RCU Developed IP, including but not limited to any Updates and Upgrades, that may have been provided by the Contractor since the previous delivery.

35.3.5 To the extent required for the Contractor to operate, maintain and modify the RFC System, King County shall grant the Contractor a non-exclusive, royalty free license within the Territory to use, copy, and modify the RCU Background IP and any Derivative Works of the RCU Developed IP created by or on behalf of King County. Upon termination or expiration of this Contract, the Contractor shall either return to King County or destroy such licensed RCU Background IP.

35.4 Other Hardware and Software

35.4.1 System Elements

Other than the DDU and RCU covered above, the primary elements of hardware and software comprising the RFC System include: smart cards, customer service terminals, clearinghouse equipment and systems, agency revalue network equipment and systems, third party revalue network equipment and systems, fare transaction processors, wireless data on-off load equipment, data acquisition system, agency back office interfaces and reporting equipment and systems, and system security keys. The Contractor has provided a table describing the types of IP comprised in each type of equipment, a copy of which table is attached hereto and made a part hereof as Exhibit 12. Prior to Full System Acceptance, the Contractor shall provide, with each invoice for a Payment Milestone, an updated copy of said Exhibit 12, in electronic format, that highlights any changes to the types of IP that are included in each type of equipment. Every six months after Full System Acceptance and during the remaining term of this Contract, the Contractor shall provide the Contract Administrator with an updated exhibit that lists any other Intellectual Property utilized in the hardware, firmware and software of the RFC System elements.

35.4.2 Ability to Continue Operating, Modifying and Maintaining the RFCS

It is the intent of the parties that the Agencies shall at all times possess such Intellectual Property license rights and either possess, or have the right to a release from escrow, such IP Materials as are necessary for each Agency to complete the development of, and use, operate and maintain, the RFC System and each of its elements, using its own employees, Agency Consultants and/or third party contractors, in the event of the expiration or termination, in whole or in part, of this Contract or if for any reason the Contractor is unable, unwilling or fails to perform the Work of this Contract. Accordingly, as is more specifically provided for each type of IP, the Contractor agrees to provide the license rights as set forth in this Section 3.1-35 and, at the times indicated herein, to deliver up-to-date IP Materials and/or deposit same into escrow in accordance with the provisions of this Section and the Escrow Provisions of Exhibit 10, attached hereto and made a part hereof.

35.4.3 Contractor IP

(a) The Contractor IP is owned by ERG R&D Pty Ltd and licensed to the Contractor as described above in Section 35.1.2. As is more specifically set out in this Section 35, the Contractor hereby grants to each Agency and other persons and entities, at no additional cost, perpetual, nonexclusive, transferable, sublicenseable, paid-up and royalty-free license rights to the Contractor IP and IP Materials for the Contractor IP, to the extent more fully specified or excepted herein, for both the period during and the period after this Contract and any successor RFCS operation and maintenance ("O&M") contract is in effect between the Agency and the Contractor.

(b) While this Contract and any successor O&M contract is in effect with the Contractor:

1. Each Agency shall have the right to use, copy, and store on RFCS equipment, smart cards and in other media now known or hereafter developed, for the purposes of operating and maintaining the DDU and the RFC System in the Territory, the following IP Materials for the Contractor IP:

- a. the compiled executable code for each program, module and element of software and firmware in Contractor IP and the interface specifications for each program
- b. the compiled executable code of any Third Party Software and public domain software incorporated into the Contractor IP and interface specifications to same to the extent provision of interface specifications is permitted by third party owners

- c. Security algorithms
- d. User Documentation including but not limited to user manuals, training manuals, and maintenance manuals
- e. General Public Documentation including instructions to the general public, third-party revalue retailers and institutional customers on the features, uses and functions of the Contractor IP

2. Each Agency shall have the right to use, copy, and store in any media now known or hereafter developed, for the purposes of operating and maintaining the RFC System in the Territory, those Contract Deliverables specifically identified in Section 35.5 as containing Contractor IP.

3. Each Agency and all persons and entities who are participants in the RFCS, including but not limited to the Agency's employees, contracted transit service providers, Institutions, Third-party Retail Revalue Providers, and holders of cards that contain the RFCS Application, shall have such rights to use, copy, display, transmit, distribute and store in any media now known or hereafter developed, Contractor IP and IP Materials for Contractor IP as specified in Section 35.4.3(b)(1), to the extent necessary to enable them to participate in the RFCS as contemplated in this Contract. By way of illustrative example, said rights include the rights to use, copy, distribute and store: software and firmware constituting Contractor IP, in object code only, on RFCS equipment and smart cards; User Documentation related to Contractor IP; and General Public Documentation related to Contractor IP.

4. Each Agency shall have the right to transfer to its successor and sublicense the rights in this Section 35.4.3(b) to new members that join the RFCS.

(c) Upon any expiration or termination of this Contract or any successor RFCS O&M contract(s) with the Contractor:

1. Each Agency shall have the right to use, copy, store, maintain, modify, update, upgrade, make Derivative Works from, and adapt all Contractor IP and IP Materials for the Contractor IP for the purposes of completing development of, and/or operating, maintaining, expanding, improving and modifying the DDU and the RFC System in the Territory. By way of illustrative example, said Contractor IP and IP Materials for the Contractor IP include:

- a. the Contract Deliverables required to be delivered to the Agencies and specifically identified in Section 35.6. as containing Contractor IP

b. the IP Materials for the Contractor IP referenced in Section 35.4.3(b)(1) and (3) above

c. the other IP Materials for the Contractor IP that come into Agency possession only upon release from escrow-

Each Agency shall also have the right to transfer to its successor and sublicense the aforesaid rights to: its Agency Consultants; its other third party contractors; and any new members that join the RFCS, subject to each Agency requiring same to undertake the protective measures required under Section 35.4.3(f).

2. Each Agency and all persons and entities who are participants in the RFCS, including but not limited to the Agency's employees, contracted transit service providers, Institutions, Third-party Retail Revalue Providers, and holders of cards that contain the RFCS Application, shall have such rights to use, copy, display, transmit, distribute and store in any media now known or hereafter developed, Contractor IP and IP Materials for the Contractor IP as specified in Section 35.4.3(b)(1), to the extent necessary to enable them to participate in the RFCS as contemplated in this Contract. By way of illustrative example, said rights include the rights to use, copy, distribute and store: software and firmware constituting Contractor IP, in object code only, on RFCS equipment and smart cards; User Documentation related to Contractor IP; and General Public Documentation related to Contractor IP.

3. Each Agency shall have the right to transfer to its successor and sublicense the rights in this Section 35.4.3(c) to: its Agency Consultants; its other third party contractors; and any new members that join the RFCS, subject to each Agency requiring same to undertake the protective measures required under Section 35.4.3(f).

4. Provided, however, the Agencies shall be required to pay Contractor an annual royalty fee, as specified below, (in total for all Agencies that are, or hereafter become, members of the RFCS) if the Agencies elect to sublicense their license rights under this Section 35.4.3(c) to a third party contractor (other than an Agency Consultant) to perform O&M services on the RFCS but only if the third party contractor succeeds the Contractor under one of the following events:

a. this Contract expires after Contractor completes ten (10) years of operation and maintenance of the RFCS, and

1. the third party contractor is contracted to provide O&M services of substantially the same scope as the O&M portions of this Contract; and
 2. the Contractor had submitted a proposal but the third party contractor was awarded the successor O&M contract; and
 3. the third party contractor that was awarded the successor O&M contract is unable to perform the O&M contract without the rights to Contractor IP and IP Materials sublicensed under this Section 35.4.3(c); or
- b. the Agencies terminate this Contract for convenience under Section 3.1-66.2 prior to completion of ten (10) years of operation of the RFCS, and
1. the third party contractor is contracted to provide O&M services of substantially the same scope as the O&M portions of this Contract; and
 2. the third party contractor is unable to perform the O&M contract without the rights to Contractor IP and IP Materials sublicensed under this Section 35.4.3(c).

The payment of any annual royalty fee due under this Section 35.4.3(c)(4) shall be due at the end of each twelve-month period following commencement of a third party contract triggering such a fee. In the event an annual royalty fee is triggered by the termination for convenience circumstances specified in Section 35.4.3(c)(4)(b), the annual royalty fee shall be the amount specified below for the year in which the termination occurs (pro rated by remaining months if the termination occurs mid-year) and thereafter, the amount specified for each year remaining in the ten year O&M period after the termination for convenience.

Contract commencement through O&M Year 1:	\$750,000
O&M Year 2:	\$700,000
O&M Year 3:	\$650,000
O&M Year 4:	\$600,000
O&M Year 5:	\$550,000
O&M Year 6:	\$500,000
O&M Year 7:	\$450,000
O&M Year 8:	\$400,000
O&M Year 9:	\$350,000
O&M Year 10:	\$300,000

In the event an annual royalty fee is triggered by the expiration circumstances specified in Section 35.4.3(c)(4)(a), the annual royalty fee shall be \$100,000 subject to possible annual adjustment in accordance with adjustment calculation set forth in Section 3.1-76.6. Notwithstanding any other provision of this Contract, no royalty fee shall be due and payable upon the earlier occurrence of: the Contractor ceases to do business in the ordinary course; the Contractor ceases to be able and willing to perform the O&M services being performed by the third party contractor; or the Agencies have made ten annual royalty fee payments, whichever shall first occur.

(d) The Contractor shall deliver Contractor IP and IP Materials for Contractor IP to the Contract Administrator to the extent required in this Section and at such times as Contractor IP is required to be provided in order to complete the scheduled tasks and milestones set forth in this Contract. The Contractor shall also deposit in escrow IP Materials for Contractor IP as provided in the Escrow Provisions set forth in Exhibit 10.

(e) Except for General Public Documentation and public domain software, the Agencies shall take reasonable protection measures to prevent the Contractor IP and IP Materials for Contractor IP from being disclosed to third parties other than those Agency Consultants, Agency third party contractors or new members that join the RFCS to whom sublicenses and transfers are permitted under this Contract. The Agencies agree that they shall authorize the Contract Administrator to establish a "check-out" program applicable to those IP Materials for the Contractor IP that come into Agency possession only upon release from escrow. Under the program, said items of IP Materials shall be kept by the Contract Administrator in a locked vault and only checked-out to employees of the Agencies, Agency Consultants, Agency third party contractors or new members of the RFCS to the extent necessary to enable same to exercise license rights granted under this Contract. Upon completion of the task requiring said IP Materials, they shall be returned to the Contract Administrator for return to the vault. The Agencies shall require such other permitted third parties to sign nondisclosure agreements requiring that they also undertake reasonable protection measures. Provided, however, this subsection shall impose no obligation on the Agencies or other permitted third parties regarding the Contractor IP and IP Materials for the Contractor IP to the extent of any portion of it (a) was in the possession of the Agencies without a confidentiality obligation prior to delivery from the Contractor or the Escrow Agent; (b) is or becomes generally known to the public without violation of this Contract; (c) is obtained by the Agencies in good faith from a third party having the right to disclose; or (d) is independently developed by one or more of the Agencies or their contractors without the participation of individuals who have access to the items covered by this subsection;

35.4.4 RFCS IP

(a) The RFCS IP shall be owned by ERG R&D Pty Ltd and licensed to the Contractor as described above in Section 35.1.2. The Contractor hereby grants to each Agency and other persons and entities, at no additional cost, perpetual, nonexclusive, transferable, sublicenseable, paid-up and royalty-free license rights to the RFCS IP and IP Materials for the RFCS IP, all as more fully specified herein.

1. Each Agency and all persons and entities who are participants in the RFCS, including but not limited to the Agency's employees, contracted transit service providers, Institutions, Third-party Retail Revalue Providers, new members that join the RFCS, and holders of cards that contain the RFCS Application, shall have such rights to use, copy, display, transmit, distribute and store in any media now known or hereafter developed, RFCS IP and IP Materials for the RFCS IP, to the extent necessary to enable them to participate in the RFCS as contemplated in this Contract. By way of illustrative example, said rights include the rights to use, copy, distribute and store: software and firmware constituting RFCS IP, in object code only, on RFCS equipment and smart cards; User Documentation related to RFCS IP; and General Public Documentation related to RFCS IP.

2. The Contractor hereby grants to each Agency, at no additional cost, a perpetual, non-exclusive, transferable, sublicenseable, paid-up and royalty free license within the Territory to use, copy, maintain, modify, update, upgrade and create Derivative Works from the RFCS IP and IP Materials for the RFCS IP. During the term of this Contract, the Agencies will only exercise their rights to modify or create Derivative Works from the RFCS IP via Change Order to the Contractor.

3. Upon any termination or expiration of the Contract, each Agency may sublicense the RFCS IP and IP Materials for the RFCS IP to any Agency Consultants or any third party contractors contracted by the Agencies for purposes of completing development of, and/or operating, maintaining, expanding, improving and modifying the RFC System in the Territory.

4. Each Agency shall have the right to transfer to its successor and sublicense the rights in this Section 35.4.4 to: its Agency Consultants; its other third party contractors; and any new members that join the RFCS.

(b) To the extent required for the Contractor to operate and maintain the RFC System, the Agencies shall grant the Contractor a non-exclusive, royalty free license within the Territory to use, copy and modify any Derivative Works of the RFCS IP created by the Agencies. Upon termination or expiration of the

Contract, the Contractor shall either return to the Agencies or destroy such licensed materials including, but not limited to, Software Documentation.

(c) The Contractor shall provide to the Agencies all IP Materials for all RFCS IP used in and for the RFC System, and for all Updates and Upgrades of such RFCS IP. The Contractor shall provide IP Materials as follows:

Prior to Full System Acceptance: At such time as the Contractor submits written notice of completion of a Project or Payment Milestone to the Contract Administrator, the Contractor shall also provide, and deliver to the escrow firm, IP Materials for any RFCS IP created or provided prior to completion of that Milestone.

After Full System Acceptance: Every six months following Full System Acceptance, or sooner at the Contract Administrator's reasonable request, the Contractor shall provide the Contract Administrator with, and deliver to the escrow firm, any IP Materials for any new or modified RFCS IP, including but not limited to any RFCS IP Updates and Upgrades, provided by the Contractor since the previous delivery.

35.4.5 Third Party IP

(a) For the duration of this Contract and without additional charge, the Contractor shall secure for itself and the Agencies such license rights to Third Party IP used in the DDU and the RFCS, and any Updates and Upgrades thereto, as are necessary for the operation and maintenance of the DDU and the RFCS and as may be necessary for the Agencies to enjoy the benefit of the other license rights granted under this Section 3.1-35. Provided, however, the Agencies shall be responsible for the cost of an Upgrade to Third Party IP which may be requested by the Agencies at their discretion.

(b) Without limiting the foregoing, the Contractor specifically agrees that each Agency shall be provided a paid-up royalty free license in the Agency's name to use, copy, store and maintain the Third Party IP, and IP Materials for same, that are provided for each unit of equipment purchased by the Agency under this Contract. Said license rights may be sublicensed to Agency Consultants, Agency third party contractors and new members of the RFCS for Agency purposes, to the extent the Third Party licensing terms permit such sublicensing. Provided, however, Contractor shall only be required to provide, and secure license rights to, such IP Materials for Third Party IP as the Third Party makes available to its customers.

(c) The Contractor shall supply the following to the Contract Administrator for all Third Party IP provided by the Contractor for use in and for the RFC System, and for all Updates and Upgrades of such Third Party IP:

1. The identity of the licensor.
2. A complete copy of the software product and version in use.
3. A description of where and how the software is used.
4. A copy in either electronic or paper form of the terms under which the third party licensor licenses the Third Party IP.
5. Any and all IP Materials to the extent Contractor has the right to provide same without violating the rights of a third party.

35.5 Contract Deliverables

35.5.1 The following Contract Deliverables identified as "CDRLs" in Figure II-11.6, shall be deemed to be Contractor IP and covered by Section 35.4.3 except to the extent of materials that meet the definition of DDU IP and are therefore covered by Section 35.2.

- #1 Conceptual Design Review
- #2 Preliminary Design Review
- #3 Final Design Review
- #16 System Integration Test Plan
- #31 System Security Plan

CDRL 37, "Software Documentation," shall be deemed to be "IP Materials" and addressed as more specifically provided herein according to whether the documentation relates to DDU IP, RCU IP, Contractor IP, RFCS IP or Third Party IP. Except for CDRL #1,2,3,16,31 and 37, all Contract Deliverables shall be subject to the provisions of this Section 35.5.

35.5.2 The Contractor hereby grants, to each Agency, at no additional cost, license rights in the Contract Deliverables that are as broad as the rights of the owner, including but not limited to a perpetual, non-exclusive, transferable, sublicenseable, paid-up and royalty free license to use, reproduce, maintain, modify, update, upgrade and create Derivative Works from said Contract Deliverables.

35.5.3 Upon any termination or expiration of the Contract, the Agencies may sublicense or transfer the Contract Deliverables to any Agency Consultants or any third party contractors contracted by the Agencies for purposes of completing

development of, and/or operating, maintaining, expanding, improving and all other purposes related to the RFC System in the Territory.

35.5.4 Each Agency shall have the right to transfer to its successor and sublicense the rights in this Section 35.5 to new members that join the RFCS.

35.6 Rights In Trademarks

35.6.1 Ownership of Trademarks

Contractor acknowledges and agrees that it shall not own or have any rights under this Contract to the RFCS trademark, and all other trademarks, service marks, or trade dress developed or used by the Agencies in connection with RFCS Cards or the RFC System are marks owned solely and exclusively by the Agencies. Contractor expressly admits and recognizes that nothing herein shall give to Contractor any right, title or interest in the RFCS Marks (except the right to use same in accordance with the terms of this Contract). Contractor shall not contest, in any way, the right, title, and interest of the Agencies in the RFCS Marks, and shall not adopt or use any mark which is confusingly similar to any of the RFCS Marks.

35.6.2 License and Use of Trademarks

The Agencies hereby grant Contractor a non-exclusive license to use the RFCS Marks, subject to the provisions of this Contract. Contractor agrees to use the RFCS Marks only in the form and manner (with appropriate legends) prescribed by the Contract Administrator. Contractor agrees not to use any other trademark or service mark in connection with any of the RFCS Marks without prior written approval of the Contract Administrator. The RFCS Marks shall appear on all cards, all vending equipment and on-board equipment, and other goods and materials specified by the Contract Administrator, in the form and manner approved by the Agencies. Contractor agrees to mark all advertising and other uses of the RFCS Marks with a legend indicating that the RFCS Marks are the property of the Agencies and that they are being used under license from the Agencies, together with any other legends or markings that may be required by law. All use of the RFCS Marks shall inure to the benefit of the Agencies.

35.6.3 Quality Control

All goods and services rendered under the RFCS Marks shall be of high quality and consistent with the requirements of this Contract and such other quality standards reasonably established from time to time by the Contract Administrator. Contractor shall conduct its business in accordance with all applicable laws and regulations, and shall maintain its operation in a professional manner. Contractor shall not perform services or use the RFCS Marks in any

manner that would, in the Contract Administrator's reasonable determination, adversely affect the goodwill or reputation of the Agencies.

35.6.4 Approval

All signs, cards, labels, advertising, promotional, and other materials bearing the RFCS Marks shall be first submitted to the Contract Administrator for approval. Contractor shall not make any material changes in materials approved by the Contract Administrator. Contractor shall periodically, and upon reasonable request by the Contract Administrator: (i) send to the Contract Administrator representative samples of signs, labels, cards, promotional materials, advertising and the like using the RFCS Marks; and (ii) accord the Contract Administrator's reasonable access to inspect Contractor's facilities and records relating to such materials.

35.6.5 No Sublicense

Contractor shall not have the right to sublicense use of the RFCS Marks, except with the prior written consent of the Agencies.

35.6.6 Policing the Marks

Contractor shall cooperate with the Agencies to protect the RFCS Marks, and shall notify the Contract Administrator of any infringement or potential infringement of which it receives knowledge. At the Contract Administrator's request, the Contractor shall cooperate with the Agencies in any actions to protect the RFCS Marks and the Agencies shall indemnify the Contractor for all costs reasonably incurred in connection with such cooperation.

35.7 Ownership of Use Data and Use Data Reports

35.7.1 Agency Ownership

(a) All Use Data, Use Data Reports and all rights thereto, shall be the sole and exclusive property of the Agencies. Contractor hereby irrevocably assigns exclusively to the Agencies and their successors and assigns any and all right, title and interest in the Use Data, including all copyrights, trade secret rights, and other proprietary rights, title, and interest thereto. For clarification, any Use Data Reports that are created by the Agencies shall be the property of the Agencies. To the extent it may be deemed by operation of law at any time that the Agencies are not the sole owners of all possible rights in and to any of the Use Data or Use Data Reports, or that Contractor, its members, or its Subcontractors retain any rights to the same other than those provided in this Contract, Contractor hereby irrevocably grants to the Agencies and their successors and assigns the exclusive unrestricted right in perpetuity to use the same and exercise all such rights on a royalty-free, worldwide, fully transferable basis. To the extent it may

be deemed that any assignment or grant of rights under this paragraph cannot be made until after the relevant Use Data is in existence, Contractor's acceptance of any payment under this Contract shall constitute such an assignment or grant with respect to all such complete or incomplete Use Data that exists as of the date such payment is accepted. Contractor agrees to execute at any time such documents as may be requested by the Agencies to evidence or perfect such assignment or the Agencies' proprietary and intellectual property rights as stated in this paragraph, but the Agencies' failure to request the execution of such documentation shall not affect the existence of the Agencies' rights as stated in this subsection.

(b) The Agencies grant the Contractor a non-exclusive, royalty-free license to use the Use Data for purposes relating to the performance by the Contractor of any of its obligations under the Contract.

35.7.2 Privacy and Confidentiality of Use Data and Use Data Reports

The Contractor shall at all times maintain the privacy and confidentiality of the Use Data and any Use Data Reports created by the Contractor or its Subcontractors. All Use Data and Use Data Reports shall be at all times segregated and kept confidential by the Contractor, and may not be used or disclosed, in whole or in part, in any manner except as expressly authorized by this Contract or with the written consent of the Contract Administrator. All Use Data and Use Data Reports shall be returned to the Agencies upon request or, if earlier, upon expiration or termination of this Contract. To the extent that such materials consist of copies of information also in the Agencies' possession, Contractor may alternately certify in writing to the Agencies that the materials have been destroyed.

INSPECTIONS & TESTING

3.I-36 Agency Inspections

Upon reasonable notice and at reasonable intervals, the Contract Administrator or the Contract Administrator's authorized representative, and representatives of any state or federal agency, shall have the right to inspect the Site(s), the Contractor's (or Subcontractor's at any tier) facilities where Work is or will be performed, and any location where the manufacture of materials and equipment is or will be performed, during normal business hours. All of the Contractor's costs associated with Contract Administrator inspections are included in the Contract Price, provided such inspections are reasonable in nature. The inspectors shall comply with Contractor's and its Subcontractors' reasonable security and confidentiality requirements except as otherwise provided in this Contract.

3.I-37 Operations Services Facility Inspections

Upon reasonable notice and at reasonable intervals, the Contract Administrator or the Contract Administrator's authorized representative, and representatives of any state or federal agency, shall have the right to inspect all facilities where the Contractor, or Subcontractor at any tier, is providing customer or transaction or other operations services, to determine whether the services being provided comply with the Contract requirements. The inspectors shall comply with Contractor's and its Subcontractors' reasonable security and confidentiality requirements except as otherwise provided in this Contract.

3.I-38 Plant Inspection

During any inspection performed at reasonable intervals following notification as required in this Section, the Contract Administrator or the Contract Administrator's authorized representative and representatives of any state or federal agency shall have access at all times during normal working hours to the areas of the Contractor's or Subcontractor's plant in which fabrication pertaining to Work under the Contract is taking place. The Contractor or Subcontractor shall furnish every reasonable facility to enable the Contract Administrator or representative to ascertain that materials and workmanship are in accordance with the Contract requirements, including for example office space, access to telephones, copiers and facsimile machines. The Contractor's and Subcontractor's obligation to provide facilities for inspection shall not include items such as travel, accommodations and meals. The inspectors shall comply with Contractor's and its Subcontractors' reasonable security and confidentiality requirements except as otherwise provided in this Contract.

3.I-39 Source Inspection

During any inspection performed at reasonable intervals following notification as required in this Section, the Contract Administrator or the Contract Administrator's authorized representative and representatives of any state or federal agency, shall have the right to inspect the production of materials, or the manufacture of products at the sources of supply. Plant inspections, however, will be undertaken with the cooperation and assistance of both the Contractor and the material producer. The Contract Administrator or the representative shall have reasonable entry at all times to such parts of the plant as concern the manufacture or production of the materials. Adequate facilities shall be furnished free of charge to make the necessary inspection, including reasonable office space, and the use of telephones, fax and copy machines. The Contract Administrator assumes no obligation to inspect materials at the source of supply. Responsibility for incorporation of satisfactory materials into the products of the Work shall rest entirely with the Contractor, notwithstanding any prior inspection or test. The inspectors shall comply with Contractor's and its Subcontractors'

reasonable security and confidentiality requirements except as otherwise provided in this Contract.

3.I-40 Testing

The Contract Price includes full compensation for any testing required to be performed by the Contractor under the Contract. The Contract Administrator may direct the Contractor to test any component of the RFC System for compliance with the Contract requirements. In the event that the performance of such testing for compliance with the Contract requirements results in additional incurred costs, such as reassembly or the replacement of parts or materials not contained in the item to be tested, these additional incurred costs shall be borne by the Contractor if the additional tests were required because an item tested pursuant to the Contract is not compliant with the Contract requirements. Otherwise, all incurred costs for such additional tests shall be borne by the Agencies. All costs for the remediation of items found not to be compliant with the Contract requirements shall be borne by the Contractor.

SOURCE OF SUPPLY, QUALITY OF MATERIALS AND DELIVERY

3.I-41 Readily Available Sources

41.1 In the performance of this Contract, the Contractor shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment which are readily available through competitive procurement, or through standard or proven production techniques, methods and processes.

41.2 The Contractor shall not, in the performance of the Work under this Contract, produce a design or specification which would require the use of structures, machines, products, materials, construction methods, equipment, or processes which the Contractor knows to be available only from a sole source, unless the Contractor has adequately justified the use of a sole source in writing, and such sole source has been approved by the Contract Administrator, which approval shall not be unreasonably withheld.

41.3 The Contractor shall not, in the performance of the Work under this Contract, produce a design or specification which would be restrictive or written in such a manner as to contain exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. When one or more brand names or trade names of comparable quality or utility are listed, they must be followed by the words "or approved equal." With regard to materials, if a single material is specified, the Contractor must substantiate in writing the basis for the selection of the material.

41.4 The Contractor shall report to the Contract Administrator any sole source or restrictive design or specification giving the reason or reasons why, in the Contractor's professional judgment, it is necessary to restrict the design or specification.

3.I-42 Defective Materials

42.1 All materials not conforming to the Contract requirements and the Contractor's warranties as set forth in the Contract will be rejected, whether shipped or not. They shall be removed immediately from the site of the Work unless otherwise permitted by the Contract Administrator. No rejected material, the defects of which have been subsequently corrected, shall be used in the Work unless approval in writing has been given by the Contract Administrator. Upon failure of the Contractor to comply promptly with any order of the Contract Administrator made under the provisions of this Section, the Contract Administrator may cause the removal and replacement of rejected material and deduct the cost thereof from any monies due or to become due to the Contractor. The Contractor shall not operate upon or modify assemblies or subcomponents to the extent that Original Equipment Manufacturer (OEM) warranties or guarantees would be voided.

42.2 The Contractor shall defend, hold harmless and indemnify the Agencies and their council members, commissioners, directors, officers, representatives, agents, consultants, and employees from and against any and all liability arising out of or in any way attributable to a consent to a substitution requested by the Contractor.

3.I-43 Contractor Furnished Material

The Contractor shall furnish all materials required to complete the Work, except for Agency-furnished material as indicated. As used in this Contract, the term "materials" shall mean materials and equipment furnished or items being procured. Notwithstanding any prior inspection or approval, only materials conforming to the Contract requirements shall be incorporated.

3.I-44 Manufacturers' Information

Manufacturers' warranties and/or guaranties, which are to be furnished with certain materials, shall be delivered to the Contract Administrator before Full System Acceptance or before Agency acceptance of materials provided during the operating phase of this Contract. The Contractor shall use all reasonable efforts to cause all manufacturers' warranties and guaranties provided with any goods or services included in the Work to be given directly in favor of the Agencies. The Contractor shall not operate upon or modify assemblies or subcomponents to the extent that OEM warranties or guaranties would be voided.

3.I-45 New Materials

The materials furnished shall be new except as may specifically be provided elsewhere in the Contract requirements.

3.I-46 Sources of Material

The Contractor shall submit to the Contract Administrator a list of its sources of all materials for the DDU and RCU and major materials for other equipment, which list shall include second sources. The list shall be submitted in sufficient time to allow the Contract Administrator or its representative to provide for inspection and testing of materials in advance of their use if desired. The Contractor shall furnish samples as indicated herein. Inspections and tests may be made by the Contract Administrator as indicated. If made at any point other than the equipment delivery site, such inspections and tests shall in no way be considered as an indication of acceptance of any material that may be delivered later for incorporation in the Work.

3.I-47 Shipment Authorization

47.1 To the extent items are subject to Contract Administrator inspection prior to shipment under the Contract requirements, the Contractor shall request authorization to ship such items at least 10 days prior to the estimated shipping date. The request shall state the date items will be ready for inspection by the Contract Administrator and list exceptions or requests for waivers for any Work not completed. The Contract Administrator may elect to conduct or waive inspection at the source prior to authorization of the shipment. The Contract Administrator will either authorize the shipment in writing or advise the Contractor that it will conduct further inspection and do so to meet the estimated shipping date. The Contractor shall not ship any items until it has received the Contract Administrator's written authorization for shipment.

47.2 As specified in this Section, shipment authorizations by the Contract Administrator prior to acceptance, with or without Contract Administrator inspection, shall in no way constitute acceptance or relieve the Contractor from fulfilling the Contract requirements.

3.I-48 Delivery of Equipment and Materials

The Contractor shall be responsible for the delivery of RFCS equipment and materials, including smart cards, to Agency locations as designated by the Contract Administrator per the Contract requirements. Shipment shall be FOB each designated destination with freight, taxes and duties prepaid. The Contractor shall also be responsible for providing any necessary local storage and transportation prior to delivery.

PARTS AVAILABILITY AND PRICING

3.I-49 Parts Availability Assurance

49.1 The Contractor shall guarantee a secure and readily available supply of all spare parts necessary or desirable for the equipment provided under this Contract for a minimum of ten (10) years from the date of Full System Acceptance.

49.2 To ensure the continuing availability of parts for future maintenance and major repair of equipment beyond such 10-year period, the Contractor shall make reasonable arrangements to assure retention of patterns, molds, special tools and drawings used by it or the Subcontractors, and shall not dispose of, destroy or modify, or permit the disposition, destruction or modification of such patterns, molds, special tools and drawings, without giving at least three months prior notice thereof to the Contract Administrator. To the extent the Contractor is not otherwise required by this Contract to provide any such items to the Agencies, the notice shall give the Agencies the first right of refusal to purchase the same on the same terms and conditions as are contained in a bona fide offer to purchase received from a third party.

3.I-50 Pricing of Spare Parts and Fare Cards

50.1 The Contract Administrator shall have the right to conduct a cost/price analysis on specific spare parts as necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board." Any differences shall be subject to negotiations to the satisfaction of the Agencies. In any event, the Agencies reserve the right to purchase spare parts from another supplier to the extent they are available.

50.2 Competitive pricing is defined as the circumstances in which the Agencies could obtain Bids or Proposals from alternative sources for the same parts. Proprietary parts and noncompetitive parts will be considered sole source parts requiring justification of pricing.

50.3 The unit prices for fare cards under this Contract shall remain fixed for a period of three (3) years after Full System Acceptance. After three years, the parties may negotiate new fare card prices. However, the Agencies reserve the right to purchase fare cards from another supplier should price negotiations with the Contractor prove unsuccessful.

3.I-51 Quality Assurance and Control

The Contractor shall develop (CDRL#25), and shall comply with throughout the Contract duration, a Quality Assurance and Control Plan specifically for the

RFCS Work which addresses the methods, procedures, and processes of ensuring compliance with standards of quality required by the Contract. The Contractor shall submit to the Contract Administrator its Quality Assurance and Control Plan for review and approval by the Contract Administrator in accordance with Section 3.I-27.5 within 30 days of any Notice to Proceed. All Work undertaken by the Contractor before approval by the Contract Administrator of the Contractor's Quality Assurance and Control Plan will be at the Contractor's risk and shall not be the basis for any claim for additional compensation or time extension. The Contract Administrator will monitor the Contractor's methods, procedures and processes for compliance with this program.

PRE-ACCEPTANCE DEFICIENCIES

3.I-52 Pre-Acceptance Deficiencies in Work Provided Before Full System Acceptance – General

52.1 Prior to Full System Acceptance of the RFC System, the Contractor shall ensure that the systems, equipment and other Work provided under the Contract are and remain fully and completely in accordance with the Contract requirements including, but not limited to, by repairing or replacing any materials, equipment, software or other items required under the Contract. Prior to Full System Acceptance the Contractor shall take such measures as are necessary to keep or bring the systems, equipment and/or other Work into conformance with the Contract requirements at no additional cost to the Agencies except as provided below for equipment.

52.2 If at any point prior to Full System Acceptance the systems, equipment and/or other Work are not in compliance with the Contract requirements, the Contract Administrator may give notice and a description of such non-compliance to the Contractor. Within seven (7) calendar days of receiving such written notification, or otherwise learning of such non-compliance, the Contractor shall take all necessary measures to bring the systems, equipment and/or other Work into compliance with the Contract requirements, including, but not limited to, the repair or replacement of any materials, equipment, software or other items required under the Contract. No act, statement or failure to act by the Contract Administrator or any Agency employee, prior to issuance of written acceptance of the BETA test or Full System Acceptance testing, shall be construed as accepting any RFCS systems, equipment or other Work or waiving any right to reject same as non-conforming. Provided, however, the Contractor may rely on written Change Orders issued by the contract Administrator in accordance with Section 3.I-31.

52.3 The procedure herein for pre-acceptance correction of defects or failures is not intended to limit or preclude any other remedies available to the Agencies by law, including those available under the Uniform Commercial Code, Title 62A RCW.

3.I-53 Pre-Acceptance Deficiencies in Equipment Provided Before Full System Acceptance

53.1 Title to units of RFCS equipment shall pass to the Agency to which such units are delivered upon that Agency's full payment for the units as provided in Section 3.I-76. The form of the instrument for passing title shall be subject to approval by the Contract Administrator. Notwithstanding passage of title, however, the Contractor shall remain responsible until Full System Acceptance of the RFC System for keeping and bringing units of equipment into conformance with Contract requirements as provided above in Section 3.I-52, subject to the following.

53.2 If at any point prior to Full System Acceptance a unit of equipment is not in conformance with the Contract requirements, the following processes shall be utilized:

- a. The Agency in possession of a nonconforming DDU, RCU, OBFTP, WDOLS, PFTP, SAFTP or TVM transaction processor shall remove the nonconforming unit, install a replacement unit from its inventory of spares and ship the nonconforming unit to the Contractor. Except as provided below, the Contractor shall reimburse the Agency for its costs of taking such removal, installation and shipment actions (collectively referred to as "change-out costs") and the Contractor shall deliver a replacement for the nonconforming unit at no cost to the Agencies.
- b. The Contractor, at its expense except as provided below, shall repair on site or remove and replace a nonconforming CST, DAC, BOC or photo ID unit.

53.3 Provided, however, the Agency shall pay the Contractor for the repair/ replacement of such nonconforming equipment and shall not be entitled to reimbursement of any change-out costs if:

- a. the unit was rendered nonconforming as a result of being physically damaged after installation but prior to Full System Acceptance; and
- b. the physical damage was not caused by the Contractor's failure to comply with the "ruggedizing" and other requirements of the Contract; and
- c. the physical damage was beyond normal wear and tear and was caused by:

- (i) a Force Majeure event; or
- (ii) deliberate or negligent act of a person other than the Contractor, its Subcontractors of any tier and their respective officers, directors, employees, agents and representatives.

The cost of a repair shall include, subject to the provision of documentation required for Contract Claims under Section 3.I-33, the actual labor costs (calculated by multiplying the actual hours required for the repair by the hourly labor rate for repairs as provided in Exhibit 9, Section XVII) and the actual material costs plus a reasonable overhead and profit margin which shall not exceed a combined margin of 31.3%. The cost of a replacement shall be the applicable unit purchase price as provided in Exhibit 9, Section II. Absent prior agreement by an Agency, an Agency shall not be required to pay repair costs under this subsection that exceed fifty percent (50%) of the cost of a new unit of equipment, and the Contractor shall replace such unit at the applicable unit purchase price as provided in Exhibit 9, Section II.

53.4 If a unit of equipment is nonconforming due to a combination of physical damage for which an Agency is responsible and physical damage or other causes for which an Agency is not responsible, any replacement and change-out costs shall be apportioned between the Agencies and the Contractor according to their relative shares of responsibility for the nonconformance.

53.5 If the Contractor believes that it is entitled to additional payment under one of the exceptions in Subsection 53.3 above, the Contractor shall submit a Contract Claim in accordance with Section 3.I-33 and shall preserve the subject device for inspection by the Contract Administrator and the DRB.

53.6 The procedure herein for pre-acceptance correction of defects or failures is not intended to limit or preclude any other remedies available to the Agencies by law, including those available under the Uniform Commercial Code, Title 62A RCW.

3.I-54 Pre-Acceptance Deficiencies in Work Provided After Full System Acceptance

To the extent the Contractor provides systems, equipment and other Work under the Contract following Full System Acceptance (FSA) of the RFC System, the provisions of Section 3.I-48, the Contract requirements, and, as applicable, the Uniform Commercial Code, Title 62A RCW, shall govern delivery, testing (if any), deficiencies, acceptance and payment of such Work unless otherwise agreed to by the parties in a Change Order.

WARRANTIES

3.I-55 General Warranties

55.1 Contractor represents and warrants that it has full authority to enter into this Contract, that this Contract is not inconsistent with any of its other obligations, and this Contract does not create a conflict of interest.

55.2 Subject to Section 3.I-58, for the duration of the Contract, the Contractor warrants and guarantees the complete RFC System furnished under this Contract including but not limited to, warranting that all materials, equipment, software and other Work provided under this Contract (a) shall meet the requirements of the Contract, (b) shall be free of defects in design, material, and workmanship, and (c) shall be new (at the time furnished). To the extent maintenance, repair, replacement, Upgrades, Updates and any other Work is performed by the Contractor after Full System Acceptance, this warranty shall also apply to such Work and the materials, equipment, software and other items that are repaired, replaced, corrected, maintained or provided.

55.3 The Contractor warrants that it has good and marketable title to all materials, equipment, software and other Work provided by the Contractor under this Contract, free of all encumbrances; and that any title conveyed to the applicable Agency or Agencies under the terms of the Contract shall be good and its transfer lawful; and that all materials, equipment, software and other Work shall be transferred and vest in the applicable Agency or Agencies free from all security interests, liens, claims or other encumbrances whatsoever. The Contractor agrees to warrant and defend same against all persons claiming the whole or any part thereof.

55.4 In addition to any other reliability standards specified in the Contract, if the rate of failure exceeds two percent (2%) or two units, whichever is greater, of the same types of units in a smart card, DDU, RCU, OBFTP, WDOLS, PFTP, SAFTP or TVM transaction processor shipment provided to the Agencies, then the entire shipment of such a type of unit shall be deemed to have failed due to a "design defect", and shall be returned to, and repaired or replaced by, the Contractor at its sole expense and without any charge to the Agencies. Provided, however, a failure in a unit shall not be counted in calculating the two percent (2%) or quantity threshold if the unit:

- a. was rendered noncompliant as a result of being physically damaged ;
and
- b. the physical damage was not caused by the Contractor's failure to comply with the "ruggedizing" and other requirements of the Contract; and
- c. the physical damage was beyond normal wear and tear and was caused by:

- (i) a Force Majeure event; or
- (ii) deliberate or negligent act of a person other than the Contractor, Its Subcontractors of any tier and their respective officers, directors, employees, agents and representatives.

The Warranty Period on units repaired or replaced due to design defects under this subsection shall be one year after repair or replacement is made. Provided, however, if the units were repaired by replacing a subpart or component, the new Warranty Period shall only apply to the subpart or component that was replaced and the original Warranty Period, tolled during the time the units were out of service, shall apply to the units as a whole.

55.5 Contractor represents and warrants that it and its Subcontractors possess the necessary skill, expertise, and capability, including sufficient personnel with the necessary qualifications, to design, implement, test, deliver, operate, and maintain the RFC System in the manner specified in this Contract, in the time period and at the prices specified herein. The representations and warranties regarding the skill, expertise, and capabilities of Contractor, its employees and Subcontractors contained in the Identity, Location and Commitment of Key Personnel, attached hereto and made a part hereof as Exhibit 7, are hereby incorporated by reference as part of this warranty.

3.I-56 Software Warranty Maintenance

56.1 For the duration of the Warranty Period, the Contractor shall provide the following services at no additional cost to the Agencies.

- a. The Contractor shall provide Technical Support Services to the Agencies in accordance with Section 6.II-10.2.1.
- b. The Contractor shall provide software maintenance and Updates on all software and firmware comprised in the RFCS wherever located, including but not limited to Contractor IP, RFCS IP, DDU IP, RCU IP, and Third Party IP, in accordance with the Contract requirements and Sections Three (Software Maintenance Services) and Four (Updates and Upgrades) of the Software Maintenance Exhibit 13.

56.2 For clarification, the parties agree that the provisions of Section 3.I-58.3 for On-site Equipment, rather than the software warranty under this Section 3.I-56, apply in the event a software file is modified or deleted on a unit of On-Site Equipment.

3.I-57 Software Post-Warranty Maintenance

57.1 Following expiration of the Warranty Period, the Contractor shall provide the following services for the monthly fee established in Exhibit 13.

- a. The Contractor shall provide Technical Support Services to the Agencies in accordance with Section 6.II-10.3.1.
- b. The Contractor shall provide software maintenance and Updates on all software and firmware comprised in the RFCS wherever located, including but not limited to Contractor IP, RFCS IP, DDU IP and Third Party IP, in accordance with the contract requirements and the Software Maintenance Exhibit 13, but excluding RCU IP.

57.2 For clarification, the parties agree that the provisions of Section 3.I-58.4 and related exhibit for On-site Equipment, rather than the provisions set out in this Section 3.I-57, apply in the event a software file is modified or deleted on a unit of On-Site Equipment.

3.I-58 RFC System Warranty and Post-Warranty Maintenance

58.1 General

58.1.1 Following Full System Acceptance, the Contractor shall provide maintenance for all equipment and other elements of the RFC System in accordance with the Warranty and Post-Warranty provisions of this Section, except as follows:

- a. the RCU, for which the Contractor shall only provide Warranty Maintenance pursuant to Section 58.3;
- b. software and firmware, for which the Contractor provides maintenance as specified above in Sections 56 and 57;
- c. retail re-value equipment, for which the Contractor provides maintenance under the service fee for Revalue Network Support Services;
- d. central system network and equipment, for which the Contractor provides maintenance under the service fees for Clearinghouse Services and Network Management.

58.1.2 The term “maintenance” as used in this section with respect to the Contractor’s responsibilities shall include:

- a. Furnishing all labor, tools, materials and equipment, and the replacement and/or installation of all parts, software, components, supplies and equipment necessary to maintain the RFCS such that it is

capable of operation in accordance with the Contract requirements.

b. All inspection, adjustment, diagnosis, analysis, re-calibration, cleaning, lubrication, testing, sealing, replacement and replenishment of parts, equipment, consumables, and expendables, and repair or replacement of equipment under the on-site and depot maintenance programs.

c. The replacement of any RFCS components which are visible to the public that become deteriorated in appearance.

58.1.3 The Contractor shall provide a comprehensive Maintenance Plan, which is a required Contract deliverable under Section 6.II-11.6 (CDRL 8), addressing all aspects of the maintenance program, including Contractor and Agency responsibilities as set forth in Section 3.I-58.5. Regarding On-Site Maintenance, the Maintenance Plan shall include (i) hierarchy of priorities, (ii) response times and (iii) other performance measurement criteria.

58.1.4 The Contractor shall, as part of its reporting obligations described in Section 6.III-13.3, provide all reports necessary for Contractor and Agency personnel to maintain the system and monitor the maintenance functions. Maintenance Report Formats shall be documented in System Maintenance Reports, which is a required Contract deliverable under Section 6.II-11.6 (CDRL 10). At a minimum, System Maintenance Reports shall include:

- a. monthly systemwide inventory report
- b. monthly summary fault tracking report
- c. monthly extended maintenance report
- d. monthly technical support service statistics report
- e. daily exception summary report

58.1.5 In addition to training and certifying its own maintenance personnel, the Contractor shall provide training, as described in Section 6.II-12, to Agency personnel to perform equipment monitoring and first line and preventive maintenance for equipment installed on Agency premises, including on-board equipment and on-site agency equipment. The Contractor shall provide all necessary proprietary tools, equipment and fixtures to each Agency for performing such monitoring and maintenance.

58.2 Contractor's Maintenance Responsibilities

The Contractor shall satisfy its maintenance obligations through the performance of the following maintenance services:

a. Depot Maintenance and On-Site Maintenance

The Contractor shall maintain all RFCS System equipment in accordance with the Contract requirements and the terms of the Depot and On-Site Maintenance Exhibits which are attached hereto and made part hereof as Exhibits 14 and 15, respectively.

b. Central System

The Contractor shall maintain all RFC System facilities, equipment and software located elsewhere than at the Agencies' sites in accordance with the Contract requirements for Central System services.

c. Retail Re-value Equipment

The Contractor shall maintain all RFC System facilities, equipment and software located at retailer sites in accordance with the Contract requirements for Revalue Network Support Services.

d. Technical Support Services

The Contractor shall provide Technical Support Services to the Agencies in accordance with Section 6.II-10.2.1 of this Contract.

58.3 Warranty Maintenance (excluding Software Warranty)

58.3.1 The Contractor shall provide maintenance in accordance with the Depot and On-Site Maintenance Exhibits which are attached hereto and made part hereof as Exhibits 14 and 15, respectively, at no charge to the Agencies during the Warranty Period except as provided below.

58.3.2 If at any point during the Warranty Period it is determined that a unit of equipment is not operating in compliance with the Contract requirements, the following processes shall be utilized:

- a. The Agency in possession of a noncompliant DDU, OBFTP, WDOLS, PFTP, SAFTP or TVM transaction processor shall remove the noncompliant unit, install a replacement unit from its inventory of spares and ship the noncompliant unit to the Contractor. Except as provided below, the Contractor shall reimburse the Agency for its reasonable costs of taking such removal, installation and shipment actions (collectively

referred to as “change-out costs”) and the Contractor shall deliver a replacement for any noncompliant unit at no cost to the Agencies.

b. The Contractor, at its expense except as provided below, shall repair on site or remove and replace a noncompliant CST, DAC, BOC or photo ID unit.

58.3.3 Provided, however, the Agency shall pay the Contractor for the repair/replacement of such noncompliant equipment and shall not be entitled to reimbursement of any change-out costs if:

a. On-Site Maintenance is required due to a software file being modified or deleted from a unit of On-Site Equipment by the intentional or negligent act of an Agency employee, Agency Consultant, or other third party not under Contractor control; or

b. the unit of Depot or On-Site Equipment was rendered noncompliant as a result of being physically damaged after acceptance; and

(i) the physical damage was not caused by the Contractor’s failure to comply with the “ruggedizing” and other requirements of the Contract; and

(ii) the physical damage was beyond normal wear and tear and was caused by:

(a) a Force Majeure event; or

(b) deliberate or negligent act of a person other than the Contractor, its Subcontractors of any tier and their respective officers, directors, employees, agents and representatives.

The cost of a repair shall include, subject to the provision of documentation required for Contract Claims under Section 3.I-33, the reasonable labor costs (calculated by multiplying the actual hours reasonably required for the repair by the applicable hourly labor rate for person performing the repairs as provided in Exhibit 9, Section XVII) and the reasonable material costs including a reasonable material mark-up for overhead/profit not exceeding 31.3%. The cost of a replacement shall be the applicable unit purchase price as provided in Exhibit 9, Section II. Absent prior agreement by an Agency, an Agency shall not be required to pay repair costs under this subsection that exceed fifty percent (50%) of the cost of a new unit of equipment and the Contractor shall replace such unit at the applicable purchase price as provided in Exhibit 9, Section II.

58.3.4 If a unit of equipment is determined to be noncompliant with Contract requirements due to a combination of physical damage for which an Agency is

responsible and physical damage or other causes for which an Agency is not responsible, any replacement and change-out costs shall be apportioned between the Agency and the Contractor according to their relative shares of responsibility for the noncompliance.

58.3.5 If the Contractor believes that it is entitled to additional payment under one of the exceptions in Subsection 58.3.3 above, the Contractor shall submit a Contract Claim in accordance with Section 3.I-33 and shall preserve the subject device for inspection by the Contract Administrator and the DRB.

58.4 Post-Warranty Maintenance

58.4.1 Following the Warranty Period, the Contractor shall provide Depot maintenance of a DDU, OBFTP, WDOLS, PFTP, SAFTP or TVM transaction processor that is not compliant with the Contract requirements and the Agencies shall pay for same, to the extent provided in Exhibit 14.

58.4.1 Following the Warranty Period, the Contractor shall provide On-Site maintenance of a CST, DAC, BOC or photo ID unit that is not compliant with the Contract requirements and the Agencies shall pay for same, to the extent provided in Exhibit 15.

58.5 Agency Maintenance Responsibilities

Upon completion of training by the Contractor and for the duration of the Contract, the Agencies will perform the following maintenance services:

- a. Equipment monitoring and cleaning, including:
 - a
 - b (i) Routine functional checks and monitoring of equipment located on Agency premises, including on-board equipment and on-site agency equipment.

(ii) Resolution of minor operational problems (e.g., unit requiring manual rebooting, stuck cash drawer, communications error requiring manual intervention, adjustment of brightness of display screen).

(iii) Equipment cleaning and lubrication.
 - b. First line maintenance, including:
 - c (i) Troubleshooting to the level of a unit of equipment.
 - d (ii) Removing and replacing a suspected bad or malfunctioning unit of equipment.
 - e (iii) Confirming proper equipment and system operation.

- c. Preventive maintenance, including:
 - f (i) Routine functional equipment checks and inspections.
 - g (ii) Internal equipment cleaning and lubrication.
 - h (iii) Running diagnostics tests.

3.I-59 RFC System Smart Card Warranty

The Contractor warrants and guarantees to the Agencies that under normal operating conditions the RFC System smart cards provided by the Contractor shall be free from defects due to design or workmanship for a period of one year beginning on the date of acceptance of a shipment by an Agency.

3.I-60 Intellectual Property Warranties

60.1 Patent, Trade Secret, and Copyright Warranties

The Contractor represents and warrants that it has or will have all appropriate licenses, agreements and/or ownership pertaining to all patents, copyrights, and trade secret property used in or required for the operation of the RFC System, or otherwise necessary in connection with the performance of its obligations under this Contract. The Contractor further represents and warrants that it will have all necessary rights to patentable materials, equipment, devices or processes used on or incorporated in the RFC System and assumes all risks arising from the use of such patented materials, equipment, devices, or processes. The RFC System (including the designing, implementation, installation, and testing of the System) and all equipment and software components of the RFC System will not infringe upon or violate any copyright, patent, trademark, trade secret, or any other similar right of any third party or improperly contain the confidential information of any third party. Provided, however, the Contractor's representations and warranties under this Section 3.I-60.1, with respect to Third Party IP and IP Materials, are limited to the extent the third party has licensed to the Contractor the Third Party IP and IP Materials and provided such representations and warranties to the Contractor. Provided further, however, the Contractor's representations and warranties under this Section 3.I-60.1 do not apply to: (a) any equipment, software, or other materials not provided by the Contractor; or (b) any combination, developed, made or otherwise performed by a party other than the Contractor, of equipment, software, or other materials provided by the Contractor with equipment, software, or other materials not provided by the Contractor.

60.2 Compatibility

60.2.1 The Contractor represents and warrants that software and all Updates and Upgrades thereto provided by the Contractor are and shall remain

throughout the entire term of the Contract (1) compatible and interoperable with the RFC System and all of the software and equipment components thereof provided by the Contractor, including all Updates or Upgrades to such software and equipment, and (2) capable of interoperability with software developed or supplied by the Agencies.

60.2.2 The equipment provided by the Contractor and all upgrades and enhancements thereto shall remain (1) compatible and interoperable with all of the other equipment provided by the Contractor, including all Updates or Upgrades to such equipment, and (2) capable of interoperability with equipment developed or supplied by the Agencies.

60.2.3 The Contractor shall ensure that (1) the RFC System can be upgraded or otherwise improved with continued compatibility and interoperability between and among all RFC System components, and (2) such Updates or Upgrades related to increased volume can be done within the price tiers specified in the Price Schedule and without major overhauls in the RFC System.

60.3 Date Warranty

The Contractor warrants that all software provided under this Contract: (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will correctly input, store, process, sort, and output all dates in formats that preserve at least century, decade, and year information; (iv) will lose no functionality, data integrity, or performance with respect to any date, by the change of any year to the next year, or by the existence of a leap year; and (v) will be capable of interoperability with other software used by the Agencies that may deliver date records from the software, or interact with date records of the software ("Date Warranty"). In the event a Date Warranty problem is reported to the Contractor by the Contract Administrator and such problem remains unresolved after three (3) calendar days, at the Contract Administrator's discretion, the Contractor shall send, at the Contractor's sole expense, at least one (1) qualified and knowledgeable representative to the premises designated by the Contract Administrator. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity to the Contract Administrator's satisfaction. This Date Warranty shall last perpetually.

60.4 Illicit Code

The software components of the RFC System provided by the Contractor throughout the entire term of the Contract shall not contain any code that may cause it or any other software to have the capability to replicate, transmit, or activate itself, or the capability to alter, damage, or erase any data or programs, without control of a person operating the equipment on which it is installed. In addition, unless expressly authorized by the Contract Administrator: (a) no part of the RFC System shall contain any code or mechanism that notifies any person or

entity other than the Agencies of any fact or event, or that allows access or control in a manner not fully disclosed to and controllable by the Agencies; and (b) no part of the System shall contain any key, node lock, time-out, or other function, implemented by any type of means, that may restrict the Agencies' use of or access to any programs, data, or equipment based on any type of limiting criteria, including frequency or duration of use. This section does not apply to any equipment or software developed or supplied by the Agencies for use in the RFC System.

3.I-61 Manufacturers' Extended Warranties

If any vendor to the Contractor offers a warranty on a unit of equipment, component or subsystem that is longer than the required warranties stated herein, the Contractor shall inform the Contract Administrator of this additional warranty period and pass said period through to the Agencies by waiving maintenance and material charges otherwise due from the Agencies under this Contract, to the extent the third party manufacturer provides such materials free of charge, provides the maintenance service itself or reimburses the Contractor for the cost of providing the maintenance service..

3.I-62 Price Warranty

The Contractor warrants that the prices to be charged the Agencies that are not specified in Exhibit 9 "Price Schedule" at the time the Contract is executed shall not exceed the prices charged by the Contractor to any other customer in the United States purchasing the same product or service in like or similar quantities, and under similar terms and conditions. (Examples of prices that are covered by said warranty because they are not specified in the Price Schedule at the time the Contract is executed are: (a) the cost of Change Orders except insofar as labor rates and new equipment unit prices are so specified; (b) repairs/replacements not covered by warranty or scheduled maintenance fees except insofar as labor rates and new equipment unit prices are so specified; and (c) any future adjustments to the prices specified in Exhibit 9 at the time the Contract is executed.)

3.I-63 No Waiver of Warranties and Contract Rights

The Agencies' conducting of tests and inspections; review of specifications or plans; preparation and installation of equipment under Contractor supervision; maintenance, use, modification and operation of the Work or any part of the RFCS System thereof performed in accordance with the Contract requirements (including all equipment and systems installed in or on Agency facilities); payment for a product or service, or acceptance of a product or service shall not constitute a waiver, modification or exclusion of any express or implied warranty or any right under this contract or in law. Warranties in this Contract are in addition to any statutory warranties or remedies. The Agencies acknowledge

that the Contractor will rely on the general requirements contained in the Agencies' Specifications in designing the RFC System but such reliance is subject to the Contractor's obligations, acknowledgements and other provisions of Section 3.I-2.1.

LEGAL RELATIONS

3.I-64 Legal Relations

64.1 No Third Party Rights Created and No Partnership Formed

It is understood and agreed that this Contract is solely for the benefit of the parties hereto and gives no right to any other party except as specifically provided herein for the United States Government. No joint venture or partnership is formed between the Contractor and the Agencies as a result of this Contract.

64.2 Compliance with Law

To the best of its ability, the Contractor shall comply, and shall ensure its Subcontractors comply, with all federal, state and local laws, regulations, resolutions and ordinances applicable to the Work.

64.3 Contractor and Subcontractor Employees

64.3.1 The Contractor is an independent contractor, and neither the Contractor nor its Subcontractors, nor their respective officers, agents or employees, are employees, for any purpose, of any of the Agencies. The Contractor and its Subcontractors shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result from the performance of and compensation for the Work and shall make no claim of career service, civil service or employment rights which may accrue to an Agency employee under state or local law.

64.3.2 The Agencies assume no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the Contractor, its Subcontractors, or their respective employees and/or others by reason of this Contract. The Contractor shall defend, indemnify and hold harmless the Agencies and their officials, employees, contractors and agents from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (1) the Contractor's or its Subcontractors' failure to pay any such compensation, wages, benefits or taxes; and/or (2) the supplying to the Contractor or its Subcontractors of work, services, materials, and/or supplies by the Contractor or its Subcontractor employees or other suppliers in connection with or in support of the performance of this Contract.

64.4 Audit Exceptions

The Contractor further agrees that it is financially responsible for and will repay the Agencies all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure to act for any reason to comply with the terms of this Contract by the Contractor, its Subcontractors, or their respective officers, employees, agents, and/or representatives. This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.

64.5 Defense and Indemnification – General

With the exception of Intellectual Property Infringement Claims covered in Subsection 64.6, Contractor shall defend, indemnify and hold harmless each Agency and its officials, employees, contractors and agents from and against all “Claims” which are herein defined as claims, demands, suits, actions, damages, expenses (including attorneys’ fees and related costs whether or not litigation is commenced) and liabilities of any kind that arise out of or are connected to (i) the negligent act or omission of the Contractor, its Subcontractors of any tier and their respective officers, directors, employees, agents and representatives; (ii) the intentional wrongful act of the Contractor, its Subcontractors of any tier and their respective officers, directors, employees, agents and representatives; and/or (iii) the Contractor’s failure to comply with any of the requirements, obligations, representations or warranties of the Contractor under this Contract. By way of illustration and not limitation, Claims may include, but are not limited to: Claims by third parties for death, injuries to persons, tangible property damage, violation of privacy and disclosure of personal information; and claims by one or more of the Agencies that they have lost revenue or incurred financial loss due to defects, errors and malfunctions in the RFC System or failure by the Contractor to provided required security against theft, fraud, breaches of security, counterfeiting, tampering, vandalism, misconduct, or otherwise.

64.6 Defense and Indemnification – Intellectual Property Infringement Claims

64.6.1 The Contractor shall defend, indemnify and hold harmless each Agency and its officials, employees, contractors and agents from and against all “Intellectual Property Infringement Claims” which are herein defined as claims, demands, suits, actions, damages, expenses (including attorneys’ fees and related costs whether or not litigation is commenced) and liabilities of any kind arising out of, relating to or in connection with an Agency’s exercise of its rights in any Intellectual Property provided by the Contractor under this Contract infringing a third party’s Intellectual Property, provided the exercise of rights by the party seeking indemnification is in accordance with this Contract and the applicable licenses. This indemnity is of no effect: (a) if the Intellectual Property Infringement Claim arose from any modification of any Intellectual Property provided by the Contractor under this Contract, unless such modification is

approved in writing by the Contractor beforehand; (b) if the Intellectual Property Infringement Claim arose from use of Intellectual Property provided by the Contractor under this Contract in combination with hardware or software not approved in writing by the Contractor beforehand; or (c) unless the Contract Administrator notifies the Contractor as soon as practicable of any actual, suspected or alleged Intellectual Property Infringement Claim.

64.6.2 So long as the Contract Administrator gives the Contractor prompt notice of any Intellectual Property Infringement Claim brought against one or more of the Agencies, and the Agencies give the Contractor information and reasonable assistance, then, in the defense or settlement of an Intellectual Property Infringement Claim, Contractor shall, in its reasonable judgment and at its option and expense: (i) obtain for each Agency the right to continue using the Intellectual Property; or (ii) replace or modify the Intellectual Property so that it becomes non-infringing while providing equivalent performance.

64.7 Limitation on Indemnity for Indirect Damages

Notwithstanding any other provisions of this Contract but subject to the provisos in this Section 64.7, the Contractor shall not be liable to the Agencies for loss of use, loss of time, loss of goodwill, inconvenience, commercial loss, lost profits or anticipated business savings, wasted management time or other indirect, incidental or consequential damages in any way related to or arising from this Contract. Provided, however, the parties agree the foregoing limitation on indirect, incidental and consequential damages does not apply to or limit liability for (a) personal injury and death, (b) loss of Agency revenue, (c) lost profits and all other damages arising from an Intellectual Property Infringement Claim, (d) wasted labor and other costs to the Agencies arising from the Contractor's failure to deliver in accordance with the Project Schedule.

64.8 Aggregate Limits

Notwithstanding any other provisions of this Contract but subject to the provisos in this Section 64.8, the Contractor's total liability to the Agencies, whether for breach of contract, warranty, negligence, strict liability in tort, indemnification or under any other legal theory, shall not exceed the "Aggregate Limit" which is herein defined as \$29,000,000 or the total amount paid by the Agencies to the Contractor through and including the payment for the Full System Acceptance Milestone if such amount is greater than \$29,000,000. Provided, however, the parties agree that the following do not count toward the foregoing aggregate liability limit: (a) costs incurred by the Contractor in performing corrective actions, warranty repairs/replacements and any other Work under the Contract; (b) insurance recoveries by Contractor, its Subcontractors or any Agency and (c) claims for damages made directly against the Contractor and/or against one or more Agencies for death, personal injuries and/or damage to third party property. Provided, further, up to another \$10,000,000 shall be added to the Aggregate

Limit for Intellectual Property Infringement Claims that would otherwise be limited because the Aggregate Limit has been reached.

64.9 Miscellaneous Provisions

64.9.1 If negligence or willful misconduct of an Agency or one or more of its officials, agents, employees or independent contractors has contributed to a loss, the Contractor shall not be obligated to indemnify such party for the proportionate share of such claims, loss, damage, charge or expense caused by said Agency negligence or willful misconduct.

64.9.2 The Contractor agrees that its obligations under this Section 64 extend, but are not limited to, any claim, demand, and/or cause of action against the Agencies brought by or on behalf of any of the Contractor's or its Subcontractors' employees or agents, or former employees or agents. For this purpose, the Contractor, by mutual negotiation, hereby waives, as respects the Agencies only, any immunity or limitation on liability that would otherwise be available against such claims under any industrial insurance act, including the Industrial Insurance provisions of Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

64.9.3 Subject to Section 64.6.2, Contractor shall defend or settle claims, actions or threatened actions under the indemnification provisions herein at its own expense, including negotiations for settlement before the institution of legal proceedings. To the extent that the settlement of a Claim causes the Contractor to exceed the Aggregate Limit, the Contractor shall not settle such Claim without the prior approval of the Agencies, which consent will not be unreasonably denied.

64.9.4 In the event of litigation between the parties to enforce rights under this Section 3.I-64, the prevailing party shall be entitled to reasonable attorney fees and reasonable litigation expenses and costs.

64.10 Assignments, Sales, Mergers and Acquisitions

64.10.1 The Contractor shall not assign or effectively transfer any interest, obligation or benefit in this Contract to a different entity, whether by sale of assets or stock, merger with another entity, assignment or novation, without prior written consent by the Agencies which shall not be unreasonably withheld; provided, however, that claims for money due or to become due to the Contractor from the Agencies under this Contract may be assigned to a bank, trust company or other financial institution without such approval. Notice of any such claim assignment shall be furnished promptly to the Agencies and shall include a copy of the signed agreement between the Contractor and the assignee.

64.10.2 The Agencies may assign this Contract, in whole or in part, to another government or not-for-profit entity with the Contractor's prior written consent. The Agencies may also assign to other governmental entities the right to purchase from the Contractor, under a separate contract, the goods and services which are the subject of this Contract on the same terms provided herein to the Agencies.

64.10.3 It shall be a condition of any approved assignment of this Contract that the assignee agree in writing to the terms and conditions of this Contract.

64.11 Applicable Law and Jurisdiction

64.11.1 This Contract and all provisions hereof shall be interpreted and enforced in accordance with, and governed by, the applicable law of the State of Washington and of the United States of America.

64.11.2 Subject to exhaustion of the Conflict Resolution provisions set forth in Section 3.I-72, the exclusive jurisdiction and venue for conducting any legal actions arising under this Contract shall reside in either the Federal District Court for Western Washington located in Seattle, Washington or the Superior Court of the State of Washington situated in King County, Washington, as appropriate. The Contractor hereby consents to personal jurisdiction and venue in said courts and waives any right which it might have to conduct legal actions involving the Agencies in other fora.

64.12 Severability

In the event any provision of this Contract is determined by a court of competent jurisdiction to be unenforceable or invalid then the meaning of that provision shall be construed, to the extent feasible, to render the provision enforceable, and if no feasible interpretation would save such provision, it shall be severed from the remainder of the Contract which shall remain in full force and effect unless the provisions that are invalid and unenforceable substantially impair the value of the entire Contract to any party. In such event the parties shall use their respective reasonable efforts to negotiate a substitute, valid and enforceable provision which most nearly effects the parties' intent in entering into this Contract. To that extent, this Contract is deemed severable.

64.13 Survival

This Section 3.I-64 shall survive and remain effective notwithstanding the expiration or termination of this Contract.

64.14 Insurance Obligations Separate and Independent

Nothing contained within this Section 64 shall relieve or modify the Contractor's obligations under Section 4.I (Insurance) or any other provisions of this Contract.

GENERAL TERMS AND CONDITIONS

3.I-65 Duration of Contract

This Contract shall take effect upon its execution by the Agencies and Contractor and shall expire ten (10) years following the date of Full System Acceptance, unless terminated sooner as provided herein.

3.I-66 Termination of Contract

66.1 If this Contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be determined in accordance with Part 49 of the Federal Acquisition Regulation in effect on the date of this Contract, to the extent necessary to enable the Agencies to comply with such Regulation.

66.2 The Agencies for their convenience may terminate this Contract, in whole or in part, at any time by the Contract Administrator serving a written notice of termination, in person or by certified mail (return receipt requested), on the Contractor's contact person specified in Section 3.I-73 or registered agent in the State of Washington. After receipt of a notice of termination, and except as directed by the Contract Administrator, the Contractor shall immediately stop Work as directed in the notice, including subcontracted Work, and comply with all other requirements in the Notice. The Contractor shall be paid its costs, including necessary and reasonable contract close-out costs and profit on that portion of the Work performed in accordance with Contract requirements, up to the date of termination (including Work in progress and completed equipment previously ordered by the Contract Administrator and held in finished goods storage) as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with reasonably detailed supporting documentation. If the Contractor has any property in its possession belonging to the Agencies, the Contractor will account for the same and dispose of it in the manner the Contract Administrator reasonably directs at the Agencies' cost. All termination payment requests are subject to such cost/price analysis as is necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board" to determine reasonableness and compliance with the Contract and applicable laws and regulations.

66.3 In addition to termination for convenience, the Agencies may terminate this Contract, in whole or in part, for default (1) if the Contractor fails to perform or comply with any material provision of the Contract and does not cure that failure in accordance with the cure provisions and timeframe set forth in this Section 66.3 or (2) if the Contractor or its parent corporation becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or

assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business voluntarily or otherwise. The Contract Administrator may, at his/her sole discretion, provide the Contractor with a written notice of default that does not terminate the Contract. Such a non-terminating default notice is not a prerequisite to issuing a notice of termination nor shall its issuance be deemed to suspend or otherwise limit the Agencies' rights to terminate the Contract. To effect termination under this Section 66.3, the Contract Administrator shall serve a notice of termination, in person or by certified mail (return receipt requested), on the Contractor's contact person specified in Section 3.I-73 or registered agent in the State of Washington, setting forth the manner in which the Contractor is in default and the effective date of termination. Notice by mail shall be deemed served three (3) days after mailing as provided above. If the basis for termination is a failure to perform that can be cured, the termination shall not take effect so long as the Contractor either (1) cures the default within ten (10) days of service of the notice, or (2) provides within said ten (10) days a plan of action to cure the default within thirty (30) days of service of the termination notice and then cures the default within said thirty (30) days. The Contractor will only be paid for goods delivered and accepted in accordance with the Contract prior to the date of termination, or services performed in accordance with the Contract prior to the date of termination, less any damages to the Agencies caused by the Contractor's failure to perform or such other occurrence that is grounds for default termination under this Section 66.3. All termination payment requests by the Contractor are subject to such cost/price analysis as is necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board" to determine reasonableness and compliance with the Contract and applicable laws and regulations.

66.4 If expected or actual funding is withdrawn, reduced or limited in any way prior to the termination date of this Contract or in any amendment hereto, the Agencies may, upon written notice to the Contractor, terminate this Contract in whole or in part. If the Contract is terminated as provided in this Subsection: (1) the rights, duties and obligations of the parties shall be the same as those specified in Section 66.2 regarding termination for convenience; and (2) the Contractor shall be released from any obligation to provide further services pursuant to the Contract. Funding under this Contract beyond the current appropriation year is conditional upon appropriation of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, this Contract will terminate at the close of the current appropriation year.

66.5 Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or law that either the Contractor or the Agencies may have in the event that the obligations, terms and conditions set forth in this Contract are breached by another party.

3.I-67 Nondiscrimination

67.1 King County Code Chapters 12.16 and 12.18 are incorporated by reference as if fully set forth herein and such requirements apply to this Contract; provided however, that no specific levels of utilization of minorities and women in the workforce of the Contractor shall be required, and the Contractor is not required to grant any preferential treatment on the basis of race, sex, color, ethnicity or national origin in its employment practices; and provided further that, notwithstanding the foregoing, any affirmative action requirements set forth in any federal regulations, statutes or rules included or referenced in the Contract Documents shall continue to apply.

67.2 During the performance of this Contract, neither the Contractor nor its Subcontractors of any tier shall discriminate on the basis of race, color, sex, religion, nationality, creed, marital status, sexual orientation, age, or presence of any sensory, mental, or physical handicap in the employment or application for employment or in the administration or delivery of services or any other benefits under this Contract.

67.3 The Contractor shall comply fully with all applicable federal, state and local laws, ordinances, executive orders and regulations which prohibit such discrimination. These laws include, but are not limited to, RCW Chapter 49.60 and Titles VI and VII of the Civil Rights Act of 1964.

67.4 If the Contractor fails to comply with King County Code Chapter 12.16, such failure shall be deemed a violation of this Chapter and a material breach of this Contract. Such breach shall be grounds for cancellation, termination or suspension of this Contract, in whole or in part pursuant to Section 3.I-66.3, and may result in the Contractor's ineligibility for further contracts with the Agencies.

67.5 During the performance of this Contract, neither the Contractor nor its Subcontractors of any tier shall engage in unfair employment practices. It is an unfair employment practice for any:

- a. employer or labor organization to discriminate against any person with respect to referral, hiring, tenure, promotion, terms, conditions, wages or other privileges of employment;
- b. employment agency or labor organization to discriminate against any person with respect to membership rights and privileges, admission to or participation in any guidance program, apprenticeship training program, or other occupational training program;
- c. employer, employment agency, or labor organization to print, circulate, or cause to be printed, published or circulated, any statement, advertisement, or publication relating to employment or membership, or to

use any form of application therefore, which indicates any discrimination unless based upon a bona fide occupation qualification;

d. employment agency to discriminate against any person with respect to any reference for employment or assignment to a particular job classification;

e. employer, employment agency or a labor organization to retaliate against any person because this person has opposed any practice forbidden by King County Code Chapter 12.18 or because that person has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing initiated under the provisions of King County Code, Chapter 12.18;

f. publisher, firm, corporation, organization or association printing, publishing or circulating any newspaper, magazine or other written publication to print or cause to be printed or circulated any advertisement with knowledge that the same is in violation of King County Code Section 12.18.030 C., or to segregate and separately designate advertisements as applying only to men and women unless such discrimination is reasonably necessary to the normal operation of the particular business, enterprise or employment, unless based upon a bona fide occupational qualification; and/or

g. employer to prohibit any person from speaking in a language other than English in the workplace unless:

(i) the employer can show that requiring that employees speak English at certain times is justified by business necessity, and

(ii) the employer informs employees of the requirement and the consequences of violating the rule.

67.6 Affirmative Action Reporting

67.6.1 The Contractor entering into a Subcontract valued at \$25,000 or more shall submit to the Contract Administrator a total personnel inventory employment profile providing minority, female, and disabled employment data. The Contractor shall complete the employment profile form provided by the Contract Administrator and submit the completed form upon the Contract Administrator's request.

67.6.2 The Contractor entering into a Contract with the Agencies valued at more than \$25,000, or Contracts which in the aggregate have a value to the Contractor of more than \$25,000, shall submit an affidavit of compliance in the form provided by the Contract Administrator, which is attached to this Contract as

Attachment A, demonstrating its commitment to comply with the provisions of King County Code, Chapter 12.16. The Contractor shall complete the above-referenced affidavit of compliance and attach the original, notarized, completed form to this Contract. Subject to the provisions of King County Code Section 12.16.060, a Contractor's personnel inventory report shall be effective for two years after the date on which the report was submitted.

67.6.3 If the Contractor engages in unfair employment practices as defined above, remedies as set forth in King County Code Section 12.18 shall be applied.

3.I-68 Audits and Evaluation

68.1 The records and documents directly related to this Contract shall be subject at all times to inspection, review or audit by the Contract Administrator, its designees, and/or federal/state officials so authorized by law during the performance of this Contract and six (6) years after termination or expiration hereof. The inspectors, reviewers or auditors shall comply with the Contractor's and its Subcontractors' reasonable security and confidentiality requirements except as otherwise provided in this Contract. The Contractor shall only be required to disclose such data related to manufacturing and administrative costs as is necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board."

68.2 The Contractor shall provide a right of access to its facilities, including those of any Subcontractor, to the Contract Administrator, its designees, the state and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Work. It is the Contract Administrator's intent to provide reasonable advance notice (72 hours) to the Contractor prior to any audits to be conducted by the Contract Administrator, its designees, or state and/or federal agencies or officials; however, the Contract Administrator reserves the right to conduct unscheduled and unannounced audits during the term of the Contract if it is not reasonably practicable to provide such notice. The auditors shall comply with the Contractor's and its Subcontractor's reasonable security and confidentiality requirements except as otherwise provided in this Contract. The Contractor shall only be required to disclose such data related to manufacturing and administrative costs as is necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board."

68.3 The Contractor agrees to cooperate with the Contract Administrator or its agents in the evaluation of the Contractor's performance under this Contract and to make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with RCW Chapter 42.17. The evaluators shall comply with the Contractor's and its Subcontractors' reasonable security and confidentiality requirements except as otherwise provided in this Contract. The Contractor shall only be required to disclose such data related to manufacturing and administrative costs as is necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board."

3.I-69 Maintenance of Records

69.1 The Contractor shall maintain accounts and records, including personnel, property, financial, and programmatic records and other such records as may be reasonably necessary to ensure proper accounting for all Contract funds and compliance with this Contract. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Contract. The Contractor shall only be required to disclose such data related to manufacturing and administrative costs as is necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board."

69.2 These records shall be maintained for a period of six (6) years after termination or expiration of the Contract hereof unless permission to destroy them is granted by the Office of the Archivist in accordance with RCW Chapter 40.14, or unless a longer retention period is required by law. The Contractor shall only be required to disclose such data related to manufacturing and administrative costs as is necessary to enable the Agencies to comply with the requirements of applicable law, FTA Circular 4220.1D and/or as is required under Section 3.I-33, "Contract Claims" and Section 3.I-34, "Dispute Review Board."

3.I-70 Section 504 and Americans with Disabilities Act

70.1 The Contractor shall complete a Disability Self Evaluation Questionnaire regarding its ability to provide programs and services to persons with disabilities mandated by Section 504 of the Rehabilitation Act of 1973, as amended, (Section 504) and the Americans with Disabilities Act of 1990 (ADA). The Contractor will prepare a Corrective Action Plan for the structural and/or programmatic changes necessary at its premises for compliance with Section 504 and the ADA. The Contractor shall return a notarized Disability Assurance of Compliance form and the Corrective Action Plan within ninety (90) days of notifying the Contract Administrator of facilities that will be used for the Work. The Disability Assurance of Compliance form and the Corrective Action Plan must be

reviewed by the King County Office of Civil Rights and Compliance before the Contract will be signed.

Please note that if the Contractor has previously submitted the Disability Assurance of Compliance form and Corrective Action Plan to the Contract Administrator, it is exempt from filing the disability form for the current contractual year, provided that the Contractor is in the same location. In this instance, the Contractor will attach a copy of the original signed assurance of compliance form affirming continued efforts to comply with Section 504 and the ADA of 1990.

3.I-71 Recycled Product Procurement Policy

71.1 It is the policy of the Agencies to use recycled materials to the maximum extent practicable (King County Code Chapter 10.16). Contractors able to supply products containing recycled materials which meet the Contract requirements are encouraged to offer them in bids and proposals and to use them wherever possible in fulfillment of contracts.

71.2 The Contractor shall use recycled paper for the production of all printed and photocopied documents related to the fulfillment of this Contract and shall ensure that, whenever possible, the cover page of each document printed on recycled paper bears an imprint identifying it as recycled paper. If the cost of recycled paper is more than fifteen percent higher than the cost of non-recycled paper, the Contractor may notify the Contract Administrator, who may waive the recycled paper requirement.

71.3 The Contractor shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical in the fulfillment of this Contract.

3.I-72 Conflict Resolution

72.1 The Contractor and the Contract Administrator shall attempt to informally resolve all disputes covered by Section 3.I-34 "Dispute Review Board", prior to initiation of the claims procedures provided therein.

72.2 The Contractor and the Contract Administrator shall also attempt to informally resolve all disputes not covered by Section 3.I-34 "Dispute Review Board." In an instance where the Contractor and the Contract Administrator are not able to resolve such a dispute informally, the Contractor may submit a written statement of its position or interpretation of the Contract, requesting a formal written opinion from the Contract Administrator, however the Contractor shall not be bound by any such opinion.

72.3 At the mutual agreement of the parties, mediation methods and services may be used to assist in conflict resolution.

72.4 Failure by the Agencies to pay any amount in dispute shall not alleviate, diminish or modify in any respect the Contractor's obligation to perform under the Contract, including the Contractor's obligation to achieve Full System Acceptance of the RFC System and to complete all Work in accordance with the Contract requirements, and the Contractor shall not cease or slow down its performance under the Contract on account of any such amount.

3.I-73 Notice

73.1 Whenever this Contract provides for notice to be provided by one party to another, such notice shall be in writing.

73.2 Unless otherwise specified, any time within which a party must take some action shall be computed from the date that the notice is received by said party.

73.3 Notices to the Contractor may be sent to or served on the Contractor's registered agent in the State of Washington or the following:

ERG Transit Systems (USA) Inc.
1800 Sutter St., Ste. 900
Concord, CA 94520

Notices to the Agencies may be sent to or served on the Contractor Administrator as follows:

Contract Administrator, Reg. Fare Coordination Project
201 S. Jackson St., KSC-TR-0333
Seattle, WA 98104-3856

3.I-74 Entire Contract/Waiver of Default

The parties agree that this Contract is the complete expression of the terms hereto and any oral or written representations or understandings not incorporated herein are excluded. Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such through written approval by the Contract Administrator, which shall be attached to the original Contract.

3.I-75 Contract Amendments

Any party may request changes to this Contract. Proposed changes which are mutually agreed upon shall be incorporated by written amendments to this Contract.

3.I-76 Payment

76.1 Payments - General

76.1.1

All amounts due any party, and all payments made, under the Contract shall be in U.S. currency. Subject to the Contractor's right to file a Contract Claim pursuant to Section 3.I-33 of the Contract and subject to Section 76.6 (to the extent it is applicable to any of the prices set out in Exhibit 9), all prices listed in Exhibit 9 constitute full compensation due the Contractor for providing the applicable Work, including but not limited to the costs of labor, materials, services, license rights, supervision, facilities, equipment, supplies, administrative overhead and profit.

76.1.2

Payments shall be made by the Agencies to the Contractor only after the Contractor submits an invoice to the Contract Administrator. No more than one (1) invoice may be submitted per month. Within thirty (30) calendar days after receipt by the Contract Administrator of an approved invoice the Agencies will pay the Contractor in accordance with the terms of this Contract for authorized services and/or materials satisfactorily delivered or performed in accordance with the Contract. Subject to the Contractor's right to file a Contract Claim pursuant to Section 3.I-33 of the Contract, acceptance of such payment by the Contractor shall constitute full compensation for all applicable Work, including but not limited to the costs of labor, materials, services, license rights, supervision, facilities, equipment, supplies, administrative overhead and profit.

76.2 Set-Off of Agency Claims

76.2.1 Except as otherwise provided in this Contract and without waiving their rights under this Contract to withhold payments in the event Work is not performed in accordance with the Contract, the Agencies agree they will not set-off from a payment due the Contractor for Work performed in accordance with the Contract an amount of loss, damages or costs the Agencies claim is owed to them by the Contractor (Agency Claim). Provided, however, the Agencies may set-off an Agency Claim if (a) the Contractor agrees to same or (b) the Agencies obtain a court judgment for the Agency Claim.

76.2.2 At the Agencies' sole discretion and not as a precondition to taking any other action, the Agencies may submit an Agency Claim to the DRB established under Section 3.I-34 or such other nonbinding mediator as the parties may agree upon. If the DRB or other mediator makes a recommendation that the Contractor should pay all or a portion of the Agency Claim, but the Contractor does not accept that recommendation, the Agencies may withhold

50% of the recommended Agency Claim amount from the next payment due the Contractor, not in full settlement of, but pending, final resolution of the dispute in accordance with Section 3.I-64.11 (Applicable Law and Jurisdiction). The parties shall share equally in costs of the DRB or other mediator to which an Agency Claim is submitted.

76.3 Payment Procedures & Schedules through Full System Acceptance

76.3.1 Payment Caps

Notwithstanding any other provisions of this Contract except Section 3.I-76.3.9 below, the total of all payments made to the Contractor, including but not limited to the Project Management and Performance Security payments, shall be limited as follows:

- a. From the Notice to Proceed through the Beta Test Acceptance Milestone Payment, the Agencies shall pay no more than **50%** of the total of all payments due under the Contract through Full System Acceptance.
- b. Once the 50% cap is reached, the Agencies shall pay no more until the successful completion of complete system commissioning for all the Agencies' equipment, in accordance with Section 6.II-11.4.5. Once that Project Milestone is reached, payments otherwise due shall be made but no more than **60%** of the total of all payments due under the Contract through Full System Acceptance (except monthly operating fees under Section 76.3.9) shall be paid prior to Full System Acceptance.

76.3.2 Project Management Expenses

- a. Project Management expenses shall consist of Administration expenses and Performance Security expenses. The Agencies shall reimburse the Contractor for such expenses as allowed under this Section 3.I-76 and the Price Schedule which is attached hereto and made a part hereof as Exhibit 9, subject to the applicable Not-to-Exceed ("NTE") Amounts specified in said Exhibit for "Administration" and "Performance Security". The Agencies shall not reimburse the Contractor for allowable expenses that exceed the applicable NTE Amounts.
- b. The Agencies shall only reimburse those Administration expenses reimbursable pursuant to Section I.A of Exhibit 9 actually incurred from the date of Notice to Proceed through the date of Full System Acceptance. The first reimbursement payment for Administration expenses shall be payable with the Milestone Payments for Integration and Reporting (Section 76.3.3.a) and Implementation (Section 76.3.4.a) that are payable upon the Agencies' acceptance of the final Baseline Project Schedule. Thereafter, the reimbursement of Administration expenses shall be payable on a monthly basis.

c. The Agencies shall only reimburse those Performance Security expenses reimbursable pursuant to Section I.B of Exhibit 9 actually incurred in accordance with this Section 3.I-76 and Exhibit 9.

d. The Agencies shall not reimburse the Contractor for any Performance Security expenses it may incur if the Agencies retain payments under Section 80.6 in lieu of the Contractor providing required Security Documents. As provided in said Section 80.6, any interest earned on the funds retained by the Agencies will be paid to the Contractor on a quarterly basis, less the reasonable banking costs incurred by the Agencies in administering the retainage account.

e. Invoices requesting reimbursement shall be submitted by the Contractor no more frequently than monthly and shall be accompanied by copies of documents that verify the Contractor's actual costs incurred.

76.3.3 Integration and Reporting

a. Payment for fifteen percent (15%) of the lump sum costs specified in Exhibit 9, Section V for Integration and Reporting will be payable upon final Baseline Project Schedule Acceptance.

b. Payment for fifteen percent (15%) of the lump sum costs specified in Exhibit 9, Section V for Integration and Reporting will be payable upon Final Design Review Acceptance.

c. Payment for twenty percent (20%) of the lump sum costs specified in Exhibit 9, Section V for Integration and Reporting will be payable upon Beta Test Readiness Acceptance.

d. Payment for twenty percent (20%) of the lump sum costs specified in Exhibit 9, Section V for Integration and Reporting will be payable upon Beta Test Acceptance.

e. Payment for the remaining thirty percent (30%) of the lump sum costs specified in Exhibit 9, Section V for Integration and Reporting will be payable upon Full System Acceptance.

76.3.4 Implementation

a. Payment for fifteen percent (15%) of the lump sum costs specified in Exhibit 9, Section VI for Phase 1 Implementation will be payable upon final Baseline Project Schedule Acceptance.

b. Payment for fifteen percent (15%) of the lump sum costs specified in Exhibit 9, Section VI for Phase 1 Implementation will be payable upon Final Design Review Acceptance.

c. Payment for twenty percent (20%) of the lump sum costs specified in Exhibit 9, Section VI for Phase 1 Implementation will be payable upon Beta Test Readiness Acceptance.

d. Payment for twenty percent (20%) of the lump sum costs specified in Exhibit 9, Section VI for Phase 1 Implementation will be payable upon Beta Test Acceptance.

e. Payment for the remaining thirty percent (30%) of the lump sum costs specified in Exhibit 9, Section VI for Phase 1 Implementation will be payable upon Full System Acceptance.

f. Full payment for the lump sum costs specified in Exhibit 9, Section VI for Phase 2 Implementation and any Special Program Implementation will be payable upon successful completion of the Work and Full System Acceptance.

76.3.5 Equipment

a. The price for each type of equipment provided through Full System Acceptance shall be the price specified in Exhibit 9, Section II based on the estimated total quantity for all Agencies specified in Appendix A for each type of equipment.

b. Payment for equipment purchased (delivered, installed and operating) under Phase I will be payable upon Beta Test Acceptance.

c. For King County Metro ONLY, payment for its equipment purchased (delivered, installed and operating) after Beta Test Acceptance will be payable upon successful completion of complete system commissioning for all the Agencies' equipment in accordance with section 6.II-11.4.5, "System Commissioning".

d. For all other Agencies, full payment for their equipment purchased (delivered, installed and operating) after Beta Test Acceptance will be payable upon Full System Acceptance (*"Full System Acceptance" is defined in 6.II.11(g)*).

76.3.6 Equipment Installation

a. The price for installation tasks performed by the Contractor through Full System Acceptance for each unit of equipment shall be the price specified in Exhibit 9, Section IV based on the estimated total quantity for all Agencies specified in Appendix A for each type of equipment.

b. Payment for equipment installation support under Phase I will be payable upon Beta Test Acceptance.

- c. For King County Metro ONLY, payment for installation support for its equipment purchased after Beta Test Acceptance will be payable upon successful completion of complete system commissioning for all the Agencies' equipment in accordance with section 6.II-11.4.5, "System Commissioning".
- d. For all other Agencies, full payment for installation support for their equipment purchased after Beta Test Acceptance will be payable upon Full System Acceptance (*"Full System Acceptance" is defined in 6.II.11 (g)*).

76.3.7 Fare Cards

- a. Prices for all fare cards supplied by the Contractor through Full System Acceptance shall be the prices specified for Year 1 in Exhibit 9, Section III.
- b. Full Payment for Fare Cards supplied under Phase I will be payable upon Beta Test Acceptance.
- c. Full Payment for Fare Cards supplied under Phase II will be payable upon Full System Acceptance.
- d. In addition to the fare card prices, the Agencies shall reimburse the Contractor a plate design fee of \$5000 for development of printing plates to enable the fare cards to be printed with Agency-supplied graphics. The Agencies shall only be required to pay this fee once for each submittal of new graphics.

76.3.8 Training

- a. Payment of the lump sum cost specified in Exhibit 9, Section VII for development of the training courses will be payable upon completion and acceptance of the development work but not sooner than the Beta Test Acceptance Milestone Payment.
- b. Payment for each training course conducted under Phase I will be payable upon Beta Test Acceptance.
- c. Payment for training courses conducted after Beta Test Acceptance will be payable upon Full System Acceptance.

76.3.9 Operations Monthly Fees Prior to Full System Acceptance

- a. During Full System Acceptance Testing, the following fixed monthly fees shall take effect, if the service is being provided, upon the first complete month that commences on or after the RFC System achieves Beneficial Use Status.

1. Customer Service Fixed Monthly Fee
2. Institutional Programs Fixed Monthly Fee
3. Card Procurement and Distribution Fixed Monthly Fee
4. Fare Card Management Fixed Monthly Fee
5. Clearinghouse Services Fixed Monthly Fee
6. Financial Management Fixed Monthly Fee
7. Network Management Fixed Monthly Fee
8. Revalue Network Support Services Fixed Monthly Fee

b. The Contractor shall issue a monthly invoice at the end of each month during which said monthly fees are applicable. Said monthly fees shall not be subject to the caps in Section 76.3.1 that limit the maximum amounts that are payable under the Contract prior to Full System Acceptance. Nothing in this Section or in the Agencies' payment of fees hereunder shall be construed as acceptance by the Agencies of all or any portion of the Work of the Contract or as a waiver of any rights or remedies of the Agencies.

76.4 Payment Procedures & Schedules after Full System Acceptance

76.4.1 Performance Security Expenses

The Agencies shall reimburse the Contractor for the expenses of providing the Letter of Credit ("LC") required under Section 80.1.4 in accordance with the terms of, and subject to the applicable Not-to-Exceed Amount (NTE Amount) specified in, Exhibit 9, Section I.B.6.d. The Agencies shall not reimburse the Contractor for any expense related to this LC that exceeds the NTE Amount.

76.4.2 Equipment

a. The unit prices for equipment shall remain as specified in Exhibit 9, Section II for one (1) year after Full System Acceptance. Thereafter, the equipment unit prices in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. Prices for units of equipment purchased after Full System Acceptance shall be payable upon the Agencies' acceptance of the units.

76.4.3 Equipment Installation

a. The unit prices for equipment installation tasks, including all labor and materials, shall remain as specified in Exhibit 9, Section IV for three (3) years after Full System Acceptance. Thereafter, the equipment installation prices in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. Prices for equipment installation tasks after Full System Acceptance shall be payable upon the Agencies' acceptance of the Work.

76.4.4 Fare Cards

a. Fare card prices shall remain as specified in Exhibit 9, Section III for three (3) years after Full System Acceptance. Thereafter, fare card prices shall be negotiated by the parties subject to compliance with the Price Warranty in Section 3.I-62. Provided, however, the Agencies reserve the right to purchase fare cards from another supplier if price negotiations are unsuccessful, in which case the Contractor shall cooperate with the alternative supplier.

b. Prices for fare cards purchased after Full System Acceptance shall be payable upon the Agencies' acceptance of the fare cards.

c. In addition to the fare card prices, the Agencies shall reimburse the Contractor a plate design fee of \$5000 for development of production plates to enable the fare cards to be printed with Agency-supplied graphics. The Agencies shall only be required to pay this fee once for each submittal of new graphics.

d. In addition to the fare card prices, the Agencies shall reimburse the Contractor for additional production costs, if any, charged by the card manufacturer for orders of quantities less than 5,000.

76.4.5 Training

a. The prices for conducting each training course after Full System Acceptance, if any, will remain as specified in Exhibit 9, Section VII for three (3) years after Full System Acceptance. Thereafter the price shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices..

b. The price for conducting a training course shall be payable with the next monthly invoice submitted by the Contractor after completion of the course.

76.4.6 Maintenance

- a. The price for conducting Depot Maintenance services after the end of the Warranty Period shall be based on the total quantity of each type of equipment that all the Agencies have purchased under this Contract. For three (3) years after the end of the Warranty Period, the prices for Depot Maintenance services will remain as specified in Exhibit 9, Section VIII. Thereafter the Per Event, Per Unit costs shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following the end of the Warranty Period, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices..
- b. The price for conducting On-Site Maintenance services after the end of the Warranty Period shall be based on the total quantity of each type of equipment that all the Agencies have purchased under this Contract. For three (3) years after the end of the Warranty Period, the prices for On-Site Maintenance services will remain as specified in Exhibit 9, Section VIII. Thereafter each Monthly Cost per Unit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following the end of the Warranty Period, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.
- c. The price for conducting Technical Support services after the end of the Warranty Period shall be based on the total quantity of each type of equipment that all the Agencies have purchased under this Contract. For three (3) years after the end of the Warranty Period, the prices for Technical Support services will remain as specified in Exhibit 9, Section VIII. Thereafter each Monthly Cost per Unit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following the end of the Warranty Period, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.
- d. The price for Software Maintenance services will remain as specified in Exhibit 9, Section VIII for the duration of the Contract.
- e. Maintenance prices shall take effect in the first complete month following the expiration of the Warranty Period and shall be payable as part of the invoice for that month.

76.4.7 Customer Service

- a. Prices for Customer Service tasks shall remain as specified in Exhibit 9, Section IX for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee and the Rate per Call Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance

with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. The "Fixed Monthly Fee" shall be applied to call volumes of up to 500 calls per month.

c. The "Rate per Call Fee" applied to each call over 500 in a month will be the fee specified in Exhibit 9, Section IX for the total number of calls during the month over 500.

d. The "Fixed Monthly Fee" and the "Rate per Call Fee" will be payable on a monthly basis.

76.4.8 Card Procurement & Distribution

a. Prices for Card Procurement and Distribution tasks, including labor and materials, shall remain as specified in Exhibit 9, Section XI for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee and the Rate per Card Shipment Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices. Provided, however, the prices shall be reduced equitably if the Agencies assume responsibility for procuring fare cards from alternative suppliers.

b. The "Rate per Card Shipment Fee" applied to each shipment will be the fee specified in Exhibit 9, Section XI for the total number of shipments during the month.

c. The "Fixed Monthly Fee" and the "Rate per Card Shipment Fee" will be payable on a monthly basis.

76.4.9 Institutional Programs

a. Prices for Institutional Program tasks shall remain as specified in Exhibit 9, Section X for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. The "Fixed Monthly Fee" will be payable on a monthly basis.

76.4.10 Fare Card Management

a. Prices for Fare Card Management tasks shall remain as specified in Exhibit 9, Section XII for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. The "Fixed Monthly Fee" will be payable on a monthly basis.

76.4.11 Clearinghouse Services

a. Prices for Clearinghouse Services shall remain as specified in Exhibit 9, Section XIII for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. There are two types of transaction fees, 1) General, and 2) 3rd Party Revalue. The General Transactions consists of E-Purse, Pass Payment and Revalue transactions and the fee shall be determined according to the total number of transactions generated by the Agencies' transit application (which may include transactions generated by non-Agency card acceptors) processed in a month as specified in Exhibit 9, Section XIII and shall be applied to each such transaction. The 3rd Party Revalue Transaction Fees shall be those revalue transactions performed only through 3rd party retailers.

c. The "Fixed Monthly Fee" and "Transaction Fees" (both General and 3rd Party Revalue) will be payable on a monthly basis.

76.4.12 Financial Management

a. Prices for Financial Management shall remain as specified in Exhibit 9, Section XIV for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. The "Fixed Monthly Fee" will be payable on a monthly basis.

76.4.13 Network Management

a. Prices for Network Management shall remain as specified in Exhibit 9, Section XV for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. The "Fixed Monthly Fee" will be payable on a monthly basis.

76.4.14 Revalue Network Support Services

a. Prices for Revalue Network Support Services shall remain as specified in Exhibit 9, Section XVI for three (3) years after Full System Acceptance. Thereafter, the Fixed Monthly Fee and the Rate Per Retail Site Fee in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

b. The "Rate Per Retail Site Fee" shall be determined according to the total number of sites serviced in a month as specified in Exhibit 9, Section XVI and shall be applied to each such site.

c. The "Fixed Monthly Fee" and the "Rate Per Retail Site Fee" will be payable on a monthly basis.

76.5 Project Staff Positions & Hourly Rates

Work undertaken by Contractor staff specified in Exhibit 9, Section XVII may be the subject of compensation on an hourly basis as provided under: Section 3.I-31.2(iii) Change Orders; Section 3.I-53, Pre-acceptance Deficiencies in Equipment Provided Before Full System Acceptance; Section 3.I-58.3, Warranty Maintenance; Exhibit 14, Section 4.2, Post Warranty Depot Maintenance; and Exhibit 15, Section 6.2, Post Warranty On-site Maintenance. To the extent the Contractor is entitled to such hours-based compensation, the hourly rates specified in Exhibit 9, Section XVII shall apply. These rates are "fully loaded" and include but are not limited to, all direct and indirect compensation, benefits, overhead and profit. No overhead or other markup shall be applied in calculating amounts due the Contractor. The hourly rates for Contractor staff shall remain as specified in Exhibit 9, Section XVII for three (3) years after Full System Acceptance. Thereafter, the hourly rates in said Exhibit shall be subject to annual adjustment upward or downward, effective on the anniversary of the first day of the first complete month following Full System Acceptance, in accordance

with the formula set forth in Section 76.6 or the Price Warranty in Section 3.I-62, whichever shall result in the lowest prices.

76.6 Future Price Adjustments

a. The following provisions shall govern adjustment of those prices in Exhibit 9 for which an annual adjustment is expressly allowed under Section 76.4.

Adjusted prices shall take effect at the start of the first complete month following expiration of the years for which prices are fixed in Exhibit 9 ("Effective Month").

b. The price adjustment shall be calculated during the month preceding the Effective Month using the CPI data released by the Department of Labor during that month ("Calculation Month"). The percentage adjustment in subject prices shall be equal to the percentage change in the index for the immediately preceding twelve-month period that was reported by the U.S. Department of Labor in the Calculation Month. The term "CPI" shall mean Consumer Price Index for Urban Wage Earners and Clerical Workers, referred to as the "CPI-W", for All Items and Not Seasonally Adjusted (All Cities figure: 1982-1984=100) or subsequent revisions of this index. As an illustrative example only: if the Effective Month were April, the calculation would be performed in March using the CPI data released in March. Said release would report on the previous twelve months that ended with February.

c. Price adjustments shall be rounded to the nearest cent.

d. Notwithstanding any price adjustment calculation provided for under this Contract, the prices in Exhibit 9 shall not be increased, and may be decreased, effective with each applicable adjustment date to the extent necessary to comply with the Price Warranty in Section 3.I-62.

76.7 Optional Items

The savings or prices for Optional Items specified in Exhibit 9, Section XVIII shall remain in effect for the duration of the Contract.

3.I-77 Work and Materials Omitted

The Contractor shall, when ordered in writing by the Contract Administrator, omit goods and/or services to be furnished under this Contract, and the value of the omitted Work and material will be determined in accordance with Section 3.I-31 "Change Orders" and deducted from the Contract Price.

3.I-78 Charges to Contractor

Charges which are the obligation of the Contractor under the terms of the Contract shall be paid by the Contractor to the Contract Administrator when due under the Contract and may be recovered by the Agencies from the Contractor if not paid when due.

3.I-79 Taxes, Licenses, and Certificate Requirements

79.1 This Contract and any of the services or supplies provided hereunder are contingent and expressly conditioned upon the ability of the Contractor to provide the specified services or supplies consistent with federal, state and local law and regulations. If, for any reason, the Contractor's required licenses or certificates are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify the Contract Administrator immediately of such condition in writing.

79.2 The Contractor shall maintain and be liable for all taxes, fees, licenses and costs as may be required by federal, state and local laws and regulations for the conduct of business by the Contractor and any Subcontractors and shall secure and maintain such licenses and permits as may be required to provide the services or supplies under this Contract.

79.3 The Contractor shall add any applicable sales tax to each invoice and, upon receipt of payment from the Contract Administrator, shall promptly remit the appropriate amount to the State of Washington. However, at the Agencies' option, the Contractor may not be required to add applicable sales tax to each invoice, in which case each Agency will satisfy its sales tax payment obligation through payment of a use tax to the State of Washington. If the Agencies so opt, they shall indemnify and hold harmless the Contractor for any loss, damage, cost or expenses incurred by the Contractor as a result of complying with the Agencies' request to not add applicable sales tax.

3.I-80 Performance Security

80.1 Letter of Credit

80.1.1 Simultaneously with its receipt of payment from the Agencies for (a) the final Baseline Project Schedule Acceptance milestone, and (b) all project management costs correctly invoiced prior to the date of final Baseline Project Schedule Acceptance, the Contractor shall deliver to the Contract Administrator an irrevocable letter of credit in the amount of two million dollars (\$2,000,000), as described below, to guarantee the Contractor's performance of its obligations under this Contract. Said letter of credit shall be maintained in effect until the earlier of (a) 12 months after the date of Full System Acceptance, or (b) 24 complete months after the commencement of Beneficial Use Status.

80.1.2 Simultaneously with the Contractor's receipt from the Agencies of the BETA Test Readiness milestone payment, the Contractor shall deliver to the Contract Administrator either (a) a performance bond, or (b) an irrevocable letter of credit. Provided either such Security Document is in the form set out in this Section 3.I-80, the Contractor shall have the option whether to provide a performance bond or irrevocable letter of credit, or both, to satisfy the obligation under this Section 80.1.2., subject to the cost limitations of Section 3.I-76.3.2 and Exhibit 9, Section I.B.2. The Security Document will be for an amount equal to three million dollars (\$3,000,000) and is provided as additional security to guarantee the Contractor's performance of its obligations under this Contract. Said Security Document shall expire twenty-four (24) months after its effective date or at such other later date as the parties at the time of issuance agree is the estimated duration through the date of Full System Acceptance. The Security Document shall be released upon Full System Acceptance if that occurs prior to expiration of the twenty-four (24) month duration or other agreed upon duration.

80.1.3 Simultaneously with the Contractor's receipt from the Agencies of the Beta Test Acceptance milestone payment, the Contractor shall deliver to the Contract Administrator another Security Document in an amount equal to three million dollars (\$3,000,000) as additional security for the performance of its obligations under this Contract. Provided the Security Document is in the form set out in this Section 3.I-80, the Contractor shall have the option whether to deliver a performance bond or an irrevocable letter of credit, or both, to cover the \$3,000,000 security obligation under this Section 80.1.3, subject to the cost limitations of Section 3.I-76.3.2 and Exhibit 9, Section I.B.3. Said Security Document shall expire twenty (20) months after its effective date or at such other later date as the parties at the time of issuance agree is the estimated duration through the date of Full System Acceptance. The Security Document shall be released upon Full System Acceptance if that occurs prior to expiration of the twenty (20) month duration or other agreed upon duration.

80.1.4 Simultaneously with the expiry of the letter of credit described in Section 80.1.1, the Contractor shall deliver to the Contract Administrator an irrevocable letter of credit in the amount of one million dollars (\$1,000,000) to guarantee the Contractor's performance of its obligations under this Contract. The parties intend that a letter of credit in such amount shall be maintained in effect for nine years from the initial effective date or such other date as the parties at the time of issuance agree is the estimated duration through the expiration date of the Contract. The initial letter of credit shall be at least three years in duration and all successor letters of credit shall be at least one year in duration. The Contractor shall deliver a successor letter of credit simultaneously with the expiration of the predecessor letter of credit so that no lapse shall occur. In the event the Contractor fails to deliver any letter of credit as required, the Agencies shall commence retainage under Section 80.6.

80.1.5 In implementing the provisions in Sections 80.1.1, 80.1.2 and 80.1.3 that require the Contractor to provide the Security Document “simultaneously” with receipt of a milestone payment from the Agencies, the Contractor and the Contract Administrator shall (a) agree, upon the submittal of the Contractor’s milestone invoice, to an exchange date and (b) meet at least 10 days prior to that exchange date to confirm that the form of the Security Document and the amount of the payment are in accordance with this Contract. The Contractor and the Contract Administrator shall then exchange the compliant Security Document and bank check on the agreed exchange date.

80.2 Form of Letter of Credit

Any letter of credit provided under this Contract shall be an irrevocable, unconditional letter of credit issued by a U.S. bank whose long term debt is rated at “A” or better by Moody’s or S&P and is reasonably acceptable to the Agencies. The letter of credit shall be issued in the form attached as Exhibit 16 unless otherwise agreed to by the Agencies which agreement shall not be unreasonably withheld. The letter of credit shall be presentable at a branch of the bank located in Seattle, Washington.

80.3 Form of Performance Bond

Any performance bond provided by the Contractor shall be issued by a U.S. surety, with an A.M. Best rating of at least A:VIII and licensed to do business in the State of Washington and registered with the Washington State Insurance Commissioner, that is reasonably acceptable to the Agencies. The performance bond shall be issued in the form attached as Exhibit 17 unless otherwise agreed to by the Agencies which agreement shall not be unreasonably withheld.

80.4 Procedure for Security Document Drawdown

The Agencies shall be entitled to draw upon a Security Document if:

- a) a default notice or notice of termination for default is served under Section 3.1 – 66.3;
- b) the default remains uncured for the period specified in Section 3.1 – 66.3; and
- c) the Agencies, either in such a default notice, termination notice or other written notice, serve a notice on the Contractor signed by a general manager of King County and witnessed by a notary public:
 - i) specifying in reasonable detail the then-estimated amount of damages, losses, or other costs caused by the default;

ii) asserting that the Contractor is liable under the Contract for the damages incurred; and

iii) informing the Contractor of their intent to draw upon the Security Document.

No draw by the Agencies shall be deemed to be a waiver of any other rights or remedies available to the Agencies under this Contract, the Parent Guaranty or at law or in equity.

80.5 Provision of New Security Document

If the bank or surety issuing the Security Documents under this Section 80 shall become insolvent or bankrupt or if the issuing bank or surety is no longer rated or qualified as required herein to satisfy the Security Document, the Agencies may require on thirty (30) days written notice, or such additional timeframe as may be approved by the Contract Administrator, that the Contractor furnish a replacement Security Document in the same amount as set forth above from another bank or surety rated or qualified as required herein and in a form as set forth herein.

80.6 Retainage Account

80.6.1 If the Contractor fails to provide any Security Document under this Section 80 in compliance with the terms herein, the Agencies shall be entitled to commence retaining any money payable by the Agencies to the Contractor up to a total amount of the Security Document that should then be in place, which amount shall remain in a retainage account for use by the Agencies as set forth below until its release from the retainage account pursuant to the terms set out below.

80.6.2 The Agencies shall be entitled to withdraw funds from the retainage account if:

a) A default notice or notice of termination for default is served under Section 3.I-66.3;

b) the default remains uncured for the period specified in Section 3.I-66.3; and

c) The Agencies, either in such a default notice, termination notice or other written notice, serve a notice on the Contractor signed by a general manager of King County and witnessed by a notary public:

i) specifying in reasonable detail the then-estimated amount of damages, losses or other costs caused by the default;

- ii) asserting that the Contractor is liable under the Contract for the damages incurred; and
- iii) informing the Contractor of their intent to withdraw money from the retainage account.

80.6.3 Any money retained by the Agencies under Section 80.6.1 will be deposited in a money market account or similar account at a U.S. bank or other U.S. financial institution with a credit rating of no less than A (Moody's or S&P) maintained by the Contract Administrator to which the only signatories are representatives of the Contract Administrator.

80.6.4 If the Agencies retain money under Section 80.6.1, any interest earned on that money shall be paid, on a quarterly basis, into a bank account nominated by the Contractor less the reasonable banking costs incurred by the Agencies in administering the retainage account.

80.6.5 If the Agencies retain money under Section 80.6.1 and the Contractor subsequently provides a Security Document in accordance with Section 80.1, the Contract Administrator, within two (2) business days after the Contractor provides a compliant Security Document, will direct the bank to release, as soon as is commercially reasonable, that portion of the money in the retainage account attributable to said Security Document that has been provided, less the reasonable banking costs incurred by the Agencies in administering the retainage account but including any interest earned that has not been paid to the Contractor in accordance with Section 80.6.4. The Agencies shall not be responsible for any subsequent time taken by the bank in transferring the funds to the Contractor.

80.6.6 Within two (2) business days after the completion of each of the events specified in Sections 80.1.1 (completion of Warranty Period), 80.1.2 (Full System Acceptance), 80.1.3 (Full System Acceptance) and 80.1.4 (Contract expiration), the Contract Administrator shall direct the bank to release, as soon as is commercially reasonable, the money in the retainage account that is attributable to the Security Document applicable to the completed event, less the reasonable banking costs incurred by the Agencies in administering the retainage account but including any interest earned that has not been paid to the Contractor in accordance with Section 80.6.4. The Agencies shall not be responsible for any time taken by the bank in transferring the funds to the Contractor.

80.6.7 No withdrawal of funds from the retainage account by the Agencies shall be deemed to be a waiver of any other rights or remedies available to the Agencies under this Contract, the Parent Guaranty or at law or in equity.

80.7 Legal Effect of Security Documents

The Security Documents or retainage amount shall serve as additional security for the performance of the Contractor's obligations, and in no event should the existence of the Security Documents or retainage amount be construed to cap, liquidate or otherwise modify or limit the amount of damages payable by the Contractor hereunder or the Guarantor under the Guaranty.

3.I-81 Monitoring Contractor Performance

81.1 "Consultant" shall mean an employee of an Agency or a consulting firm, being Accenture, Cap Gemini, IBI or firm of similar capability agreed by the parties, experienced in information systems development and/or project management, serving the Agencies to observe Contractor's Work on the RFC System at the Contractor's facilities.

81.2 "Trigger Event" shall mean any of the following events:

- a. failure to complete a critical Project or Payment Milestone in accordance with the Contract requirements;
- b. Contractor is insolvent or is unable to pay its debts as they mature, or makes an assignment for the benefit of creditors;
- c. Contractor files a petition under any foreign, state or United States federal bankruptcy act, receivership statute, or the like, as they now exist, or as they may be amended; or
- d. such a petition is filed by any third party, or an involuntary petition is not resolved favorably to Contractor within thirty (30) days; or
- e. failure to timely provide source code and documentation as required in the Contract; or
- f. the Contract Administrator, exercising his/her discretion on reasonable grounds, determines that Contractor's financial responsibility or performance under the Contract requires monitoring or other assurances, after having given Contractor a reasonable opportunity to respond to the Contract Administrator's concerns.

81.3 Upon the occurrence of any of the Trigger Events, and in addition to or in lieu of the Agencies exercising any other remedies or rights they may have under the Contract or at law, the Contract Administrator shall have the option to require that Contractor allow the Consultant on site at any of Contractor's facilities where any portion of the RFC System is developed, operated, and/or maintained (a "Contractor Site"). Upon five days advance written notice from the Contract Administrator that he/she will send the Consultant, and provided the Contractor

has received a signed non-disclosure agreement from the Consultant in a form and substance reasonably satisfactory to the Contractor, the Contractor shall:

- a. provide the Consultant with reasonable office space, equipment, and network access at any Contractor Site; and
- b. provide the Consultant with supervised access to any meetings, records, plans, memos, software code, manufacturing processes, or other documents, personnel, equipment, facilities, or information pertaining solely to the RFC System; however, the Consultant shall not be provided with any paper or electronic copies of same.

The provisions of this Section 3.I-81 are in addition to, and not in limitation of, the Agencies' inspection, testing and other rights under the Contract to review and monitor the Contractor's Work.

81.4 The Consultant may report back to the Agencies any information it learns in such activities and observances, and report Contractor's apparent progress and performance under the Contract. Consultant and the Agencies receiving such information shall keep the information confidential as provided in Section 3.I-35. However, upon any termination of this Contract, Consultant and the Agencies may use such information (and provide such information to their respective subcontractors) solely for purposes of development, operation or maintenance of the RFC System.

3.I-82 Disclosure

Pursuant to King County Code 3.04.120, the Contractor shall file a disclosure statement with the Board of Ethics and the King County Executive.

3.I-83 Disadvantaged Business Enterprise (DBE) Requirements

83.1 It is the Agencies' policy that disadvantaged business enterprises (DBEs) shall have the maximum practicable opportunity to participate in the performance of this Contract. In this regard, the Contractor shall take all necessary and reasonable steps to ensure that DBEs have the maximum opportunity to participate in the performance of Subcontracts and agreements under this Contract. The Contractor shall not discriminate or tolerate harassment or abuse on the basis of creed, race, religion, color, sex, sexual orientation, age, national origin or the presence of any sensory, mental or physical disability in the award and performance of such contracts, Subcontracts and agreements.

83.2 A DBE is any firm certified as such at the date and time of execution of the Contract by the Washington State Office of Minority and Women's Business Enterprise (OMWBE) or by the Federal Small Business Administration under section 8(a) of the Federal Small Business Act, as amended. If the Contractor subcontracts any Work under this Contract, the Contractor shall make affirmative

efforts to solicit and use DBEs. Affirmative efforts shall include, at a minimum, that the Contractor take the following steps prior to entering into any Subcontracts:

- a. Contact King County's Minority/Women Business Enterprise Office to explain the Work to be subcontracted and to obtain a listing of DBEs which may be interested in performing such subcontract Work;
- b. Solicit proposals from such DBEs; and
- c. Award Subcontracts to such DBEs which provide reasonable proposals.

83.3 The Contractor shall complete and submit upon execution of the Contract the Sworn Statement Regarding Disadvantaged Business Enterprise Commitment set forth in Attachment B of this Contract.

83.4 Failure to comply with the DBE requirements will be grounds for termination of the Contract, as applicable. If the Contractor subcontracts Work hereunder and fails to comply with the DBE participation requirements set forth herein, then the Agencies may declare a breach of Contract and avail themselves of all remedies under the Contract and by law on account of such breach.

3.I-84 Lobbying Certification and Disclosure

The provisions of 49 CFR Part 20 shall apply to this Contract. The Contractor acknowledges that, prior to execution of this Contract, for it and every Subcontractor, regardless of tier, whose Subcontract exceeds \$100,000, it was required to execute and submit the "Certification Regarding Lobbying" form, and, if required by such regulations, a Standard Form - LLL, "Disclosure of Lobbying Activities". Copies of the completed certificate and form are attached as Attachments D and E to this Contract, respectively.

3.I-85 Contract Close-Out and Transition

85.1 Upon the termination or expiration of this Contract, the Agencies, in their sole discretion, may choose to operate the RFC System or to conduct a procurement process and select a new Contractor. Regardless of the Agencies' course of action, the provisions of this Section 3.I-85 shall apply.

85.2 Contractor shall provide the Agencies with reasonable access to Contractor Staff involved with the operation and maintenance of the central clearinghouse. Such Staff shall be provided on a consultant basis on rates, terms and conditions to be agreed, but shall remain employees of Contractor. The consultant agreements shall include relevant non-solicitation clauses. The Contractor Staff shall be provided on a non-exclusive basis and the Agencies agree that they shall not prevent the Staff from continuing to provide services to Contractor.

85.3 The Agencies' rights to access, use and/or share any and all Intellectual Property required to operate and maintain the RFC System upon expiration or termination of the Contract shall be as set forth in Section 3.I-35 of this Contract and Exhibit 10, Escrow Provisions.

85.4 Contractor shall provide a Contract Close-Out Transition Plan ("Transition Plan") as required by Section 6.II-11.6.1.1 of the Contract. The Transition Plan submitted by the Contractor shall include, but is not limited to, the following elements:

- a. Identification of all areas of the RFC System affected by system transition to another contractor or to operation of the RFC System by the Agencies; and
- b. Identification of all procedures required to sustain on-going system RFC System operations; and
- c. Identification of the cost elements associated with system transition; and
- d. Information on existing fixed assets; and
- e. Description of processes necessary to identify all resources required to operate and manage the RFC System; and
- f. Procedures to provide a timely and efficient transition; and
- g. Procedures to minimize impact to Agency daily operations; and
- i h. Procedures to minimize impact to services provided to the Agencies; and
- i. Operations procedures to manage existing RFC System during transition; and
- j. Procedures to minimize customer impact; and
- k. Procedures to train and prepare Agency staff for transition to a new contractor or to Agency operation; and
- l. Procedures to minimize transition costs to the Agencies; and
- m. Procedures to provide fixed asset inventory information.

3.I-86 Other Contracts from this Procurement Process

To the extent permitted by applicable law and regulations, other government agencies and educational institutions may seek to enter into a contract with the Contractor for equipment and services specified in the Contract. If the Contractor consents, which consent shall not be unreasonably withheld, each such government agency and educational institution may execute an individual contract with the Contractor for receiving and accepting equipment and services, and for directly paying the Contractor. The Agencies assume no responsibility or liability for any equipment and/or services purchased by other agencies/institutions pursuant to this provision.

INSURANCE

4. INSURANCE

4.I-1 Insurance Requirements

4.I-1.1 General Requirements

By the date of execution of this Contract, the Contractor shall procure and maintain for the duration of this Contract, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of Work hereunder by the Contractor, its agents, representatives, employees, and/or Subcontractors. The cost of such insurance shall be paid by the Contractor or Subcontractor. The Contractor may furnish separate certificates of insurance and policy endorsements for each Subcontractor as evidence of compliance with the insurance requirements of this Contract.

For All Coverages:

- Each insurance policy shall be written on an "occurrence" form; excepting that insurance for Professional Liability and Errors and Omissions, may be acceptable on a "claims made" form.
- If coverage is approved and purchased on a "claims made" basis, the Contractor warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of completion of the Work which is the subject of this Contract.
- By requiring such minimum insurance, the Agencies shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Contract. The Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

4.I-1.2 Minimum Scope Of Insurance

Coverage shall be at least as broad as:

(a) General Liability:

Insurance Services Office form number (CG 00 01 Ed. 11-88 or Australian equivalent) covering **COMMERCIAL GENERAL LIABILITY**.

(b) Professional Liability:

Professional Liability, Errors and Omissions coverage.
In the event that services delivered pursuant to this Contract either directly or indirectly involve or require professional services, Professional Liability, Errors and Omissions coverage shall be provided.

(c) Automobile Liability:

Insurance Services Office form number (CA 00 01 Ed. 12-90 or Australian equivalent) covering **BUSINESS AUTO COVERAGE**, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9.

(d) Workers' Compensation:

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable Federal or "Other States" State Law.

(e) Employers Liability or "Stop-Gap":

The protection provided by the Workers Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability policy.

(f) Crime Coverage:

Coverage for losses of money and property as a result of theft, burglary, forgery, alteration, disappearance and destruction.

(g) Employee Dishonesty:

Coverage for losses due to the dishonest acts of employees.

4.I-1.3 Minimum Limits Of Insurance

The Contractor shall maintain limits no less than, for:

- (a) General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, and for those policies with aggregate limits, a \$5,000,000 aggregate limit.

- (b) Professional Liability, Errors and Omissions: \$5,000,000 for each claim and \$5,000,000 aggregate.
- (c) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (d) Workers' Compensation: Statutory requirements of the State of residency.
- (e) Employers Liability/Stop Gap: \$ 1,000,000.
- (f) Crime Coverage: Coverage for losses of money and property as a result of theft, burglary, forgery, alteration, disappearance and destruction: \$2,500,000.
- (g) Employee Dishonesty: \$2,500,000.

4.I-1.4 Deductibles and Self-Insured Retentions

The deductible and/or self-insured retention of the policies shall not limit or apply to the Contractor's liability to the Agencies and shall be the sole responsibility of the Contractor.

4.I-1.5 Other Insurance Provisions

The insurance policies required in this Contract are to contain, or be endorsed to contain the following provisions:

- (a) Liability Policies Except Professional and Workers Compensation:
 - The Agencies, their officers, officials, employees and agents are to be covered as additional insureds as respects liability arising out of activities performed by or on behalf of the Contractor in connection with this Contract.
 - Any insurance and/or self-insurance maintained by the Agencies, their officers, officials, employees or agents shall not contribute with the Contractor's insurance or benefit the Contractor in any way.
 - The Contractor's insurance shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(b) All Policies:

- Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice, has been given to the Contract Administrator.

4.I-1.6 Acceptability of Insurers

Unless otherwise approved by the Contract Administrator,

Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII, or, if not rated with Bests', with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors and Omissions insurance may be placed with insurers with a Bests' rating of B+:VII. Any exception must be approved by the Contract Administrator.

If at any time the foregoing policies shall be or become unsatisfactory to the Contract Administrator (acting reasonably), as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the Contract Administrator (acting reasonably), the Contractor shall, upon notice to that effect from the Contract Administrator, promptly obtain a new policy, and shall submit the same to the Contract Administrator, with the appropriate certificates and endorsements, for approval.

4.I-1.7 Verification of Coverage

The Contractor shall furnish the Contract Administrator with certificates of insurance and endorsements required by this Contract. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the Contract Administrator (acting reasonably) and are to be received and approved by the Contract Administrator (acting reasonably) prior to the commencement of activities associated with the Contract. The Contract Administrator reserves the right to require complete, certified copies of all required insurance policies at any time.

4.I-1.8 Subcontractors

The Contractor shall include all Subcontractors as insureds under its policies, or shall furnish separate certificates of insurance and policy endorsements for each Subcontractor. Insurance coverages provided by Subcontractors as evidence of compliance with the insurance requirements of this Contract shall be subject to all of the requirements stated herein.

4.I-2 Certificate of Insurance

The Agencies require use of the standard insurance coverage form. Reference the insurance requirements for specific coverages required.

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS

5. FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIREMENTS

5.I-1 Federal Changes

The Contractor shall at all times comply with all applicable Federal Transit Administration (FTA) regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the grant agreements between the Agencies and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Failure by the Contractor to so comply shall constitute a material breach of this Contract. In the event any such changes significantly affect the cost or schedule to perform the Work, the Contractor shall be entitled to an equitable adjustment under the applicable provisions of this Contract.

5.I-2 No Government Obligations to Third Parties

The Agencies and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Agencies, the Contractor, or any other party (whether or not a party to this Contract) pertaining to any matter resulting from this Contract.

The Contractor agrees to include the above clause in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that this clause shall not be modified, except to identify the Subcontractor who will be subject to its provisions.

5.I-3 Disadvantaged Business Participation

It is the policy of the US Department of Transportation that disadvantaged business enterprises as defined in section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26, shall have maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this Contract.

Consequently, the requirements of section 1101(b) of TEA-21, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR Part 26 apply to this Contract.

The Contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 and Section 1101(b) of TEA-21 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Contract. In this regard, the Contractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged businesses have the maximum opportunity to compete for and perform Subcontracts. The Contractor shall not discriminate on the basis of race, color, national origin, sex, religion, age or physical handicap in the award and performance of Subcontracts.

As a material part of its performance of this Contract, the Contractor shall comply with the provisions and requirements set forth in this Contract related to participation by disadvantaged businesses.

5.I-4 Civil Rights

During the performance of this Contract, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), and subcontractors agree as follows:

A. NONDISCRIMINATION

In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. §2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

B. EQUAL EMPLOYMENT OPPORTUNITY

The following equal employment opportunity requirements apply to this Contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to comply with all applicable equal

employment opportunity requirements of the US Department of Labor (US DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. §2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the project for which this Contract Work is being performed. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age -- In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§623 and Federal transit laws at 49 U.S.C. §5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities -- In accordance with section 102 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §12112, the Contractor agrees that it will comply with the requirements of US Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. SUBCONTRACTS

The Contractor also agrees to include these requirements in each Subcontract financed in whole or in part with Federal

assistance provided by FTA, modified only if necessary to identify the affected parties.

5.I-5 Buy America Requirements

The Contractor agrees to comply with 49 U.S.C. §5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver listed in 49 CFR §661.7. The Contractor's Buy America Certificate is attached hereto and made a part hereof as Attachment F.

5.I-6 Contract Work Hours and Safety Standards Act

A. Overtime Requirements

No Contractor or Subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1.5) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week. (29 CFR § 5.5(b)(1)).

B. Payrolls and basic records

Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work (or under the U. S. Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project). Such records shall contain the name, address and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid.

Whenever the Secretary of Labor has found under 29 CFR §5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1 (b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship

programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

5.I-7 Access to Records and Reports

The Contractor agrees to provide the Contract Administrator, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making and conducting audits, inspections, examinations, excerpts and transcriptions to the extent required by law or this Contract.

The Contractor also agrees, pursuant to 49 CFR §633.17, to provide the FTA Administrator or his or her authorized representatives, including any Project Management Oversight (PMO) contractor, access to the extent required by law or this Contract to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. §5302(a)1, which is receiving federal financial assistance through the programs described in 49 U.S.C. §§5307, 5309 or 5311. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably required by law or this Contract.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain such books, records, account and reports until the Agencies, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

5.I-8 Cargo Preference - Use of United States Flag Vessels

Pursuant to 46 CFR Part 381, the following provisions are applicable in the event equipment, materials or commodities will be or are transported by ocean vessel in carrying out the Work under this Contract. In such event, the Contractor agrees as follows:

- A. To utilize privately owned United States-flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.

B. To furnish within 20 days following the date of loading for shipments originating within the United States, or within 30 working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on board" commercial ocean bill-of-lading in English for each shipment of cargo described in subparagraph A above to the Agencies (through the Contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, D.C. 20590, marked with appropriate identification of the project.

C. To insert the substance of the provisions of this clause in any subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material or commodities by ocean vessel.

5.I-9 Contractor's and Subcontractors' certificate Regarding Debarment, Suspension, Ineligibility or Voluntary Exclusion

A. The Contractor's Certification Regarding Debarment, Suspension and Other Ineligibility and Voluntary Exclusion is attached hereto and made part hereof as Attachment G.

B. The Contractor shall include in each Subcontract exceeding \$100,000, regardless of tier, a clause requiring each lower tiered Subcontractor to provide the Certification set forth in paragraph C of this section. Each subcontract, regardless of tier, shall contain a provision that the Subcontractor shall not knowingly enter into any lower tier Subcontract exceeding \$100,000 with a person or entity who is debarred, suspended or declared ineligible from obtaining federal assistance funds. If a proposed Subcontractor is unable to certify to the statements in the following certification, the Contractor shall promptly notify the Contract Administrator and provide all applicable documentation.

C. Each Subcontractor with a Subcontract exceeding \$100,000 shall certify as follows:

Subcontractor's Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

1. _____ ("Subcontractor") certifies, by submission of its proposal to _____ ("Contractor"), that neither it nor its "principals" [as defined in 49 CFR §29.105(p)] is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily

excluded from participation in contracts by any Federal department or agency.

2. If Subcontractor is unable to certify to the statements in this certification, subcontractor has attached a written explanation to its proposal to the Contractor.

5.I-10 Program Fraud and False or Fraudulent Statements And Related Acts

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §3801 *et seq.* and US Department of Transportation (DOT) regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of this Contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to this Contract or the FTA assisted project for which this Contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the Government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each Subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the Subcontractor who will be subject to the provisions.

5.I-11 Environmental Requirements

The Contractor agrees to comply with all applicable standards, orders or requirements as follows:

A. Clean Air

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§7401 *et seq.* The Contractor agrees to

report each violation to the Contract Administrator. The Agencies will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 under this Contract.

B. Clean Water

The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 *et seq.* The Contractor agrees to report each violation to the Contract Administrator. The Contract Administrator will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each Subcontract exceeding \$100,000 under this Contract.

C. Energy Conservation

The Contractor shall comply with mandatory standards and policies on energy efficiency contained in the Washington State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. §§6321 *et seq.*).

5.I-12 Recycled Products

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. §6962, including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

5.I-13 Incorporation of Federal Transit Administration (FTA) Terms

The provisions in this Section 5 include, in part, certain Standard Terms and Conditions required by the US Department of Transportation (DOT), whether or not expressly set forth in the preceding provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1D, dated April 15, 1996 as it may be amended from time to time, are hereby incorporated in this Contract by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests of the Contract

Administrator which would cause the Agencies to be in violation of the FTA terms and conditions.

5.I-14 Rights in Data and Copyrights

(a) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Contract. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information used for RFCS Project administration.

(b) The following restrictions apply to all subject data first produced in the performance of this Contract:

1. Except for its own internal use, the Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Contractor authorize others to do so, without the written consent of the Agencies, until such time as the Agencies may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to contracts with an institution of higher learning.
2. As authorized by 49 CFR § 18.34 and 49 CFR § 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize other to use, for government purposes:
 - a. Any subject data developed under a grant, cooperative agreement, subgrant, sub-agreement, or third party contract, whether a copyright has been obtained; and
 - b. Any rights of copyright to which a Contractor purchases ownership with federal assistance.

(c) When FTA provides assistance to agencies participating in a contract involving planning, research, development, or a demonstration, it is generally FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the contract to those parties that have participated therein. Therefore, unless FTA determines otherwise, the Contractor understands and agrees that, in addition to the rights set forth in this subsection, FTA may make available to any FTA recipient, subrecipient, third-party Contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this contract or a copy of the subject data first produced under this contract. This subsection, however, does not apply to adaptations of automatic data processing equipment or programs for the Contractor's use which costs are financed with capital funds

(sections 3, 9, 16, 18 or 25 of the Federal Transit Act, as amended, or Title 23 capital funds).

(d) Unless prohibited by State law, the Contractor agrees to indemnify, save and hold harmless the Agencies and the Federal Government, their officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Contract. The Contractor shall not be required to indemnify the Agencies or the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Agencies or the Federal Government.

(e) Nothing contained in this section on rights in data shall imply a license to the Agencies or the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Agencies or the Federal Government under any patent.

(f) The requirements of paragraphs (b), (c), and (d) of this subsection do not apply to material furnished to the Contractor by the Agencies and incorporated in the Work carried out under the Contract.

(g) The intellectual property ownership rights in subject data are defined in Section 3.I-35.

End of Division I - Contract Terms and Conditions

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IN WITNESS WHEREOF, authorized representatives of the Agencies and the Contractor have signed their names in the spaces provided below.

Central Puget Sound Regional Transit Authority

By: _____
Joni Earl, Executive Director

Snohomish County Public Transportation Benefit Area

By: _____
Joyce F. Olson, Chief Executive Officer

King County

By: _____
Rick C. Walsh, Transit General Manager

Kitsap County Public Transportation Benefit Area

By: _____
Richard M. Hayes, Executive Officer

Washington State Ferries, Washington State Department of Transportation

By: _____
Mike Thorne
Director, CEO

Pierce County Public Transportation Benefit Area

By: _____
Don S. Monroe, Chief Executive Officer

City of Everett

By: _____
Frank E. Anderson, Mayor,
or by his designee, Kenneth C. Housden

ERG Transit Systems (USA) Inc.

By: _____
Mike C. Nash
Regional Managing Director